

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE

Senate Bill 631
 Finance

(Senator Forehand)

Consumer Protection - Freezes on Credit Reports and Protection of Personal Information

This bill authorizes a consumer, with specified exceptions, to elect to place a security freeze on the consumer’s credit report by written request sent by certified mail, telephone, or electronic mail under specified circumstances. The bill also imposes duties on a “business” to protect an individual’s “personal information” and to provide notice of a security breach relating to an individual’s personal information. Violation of these later provisions bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act.

Fiscal Summary

State Effect: General fund expenditures could increase by approximately \$43,000 in FY 2007 to process and investigate complaints under the bill’s security freeze provisions by the Commissioner of Financial Regulation. Any cost recovery by the Attorney General resulting from actions brought under the unfair and deceptive trade practices provision cannot be quantified beforehand.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF Revenue	-	-	-	-	-
GF Expenditure	43,000	52,300	55,400	60,700	62,200
Net Effect	(\$43,000)	(\$52,300)	(\$55,400)	(\$60,700)	(\$62,200)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: When a consumer elects to place a security freeze, a consumer reporting agency must require a consumer to provide proper identification. If the consumer elects to place the freeze by telephone or in writing, the consumer reporting agency must place the freeze within five business days after receiving the request. If the consumer elects to place the freeze by electronic mail, the consumer reporting agency must place the freeze within three days after receiving the request.

Within five days after placing a security freeze, the consumer reporting agency must: (1) send written confirmation to the consumer; (2) provide the consumer with a unique personal identification number or password to be used when authorizing the release of the report; and (3) provide the consumer with a written statement of the procedures for requesting the removal of the freeze or temporary lifting of it.

While the freeze is in place, a consumer's credit report and any information in it may not be released without the consumer's express prior authorization. A consumer reporting agency may advise a person that a security freeze is in effect. However, the agency may not state or imply that a security freeze reflects a negative credit score, credit history, or credit rating. If a consumer wants to allow access to his or her credit report while the security freeze is in place, the consumer must follow specified procedures to notify the consumer reporting agency. The consumer reporting agency must comply with the request within three business days after receipt and may develop procedures to receive and process a request in an expedited manner.

If a person requests access to a consumer's credit report while a security freeze is in place and is denied access, the person may treat the application as incomplete.

Generally, a consumer reporting agency may remove or temporarily lift a security freeze only on the consumer's request, and the freeze must remain in place until the consumer requests that it be removed. However, the agency may remove the freeze if the placement was based on a material misrepresentation of fact by the consumer. If an agency intends to remove a freeze because of a material misrepresentation, it must notify the consumer in writing at least five business days before removing the freeze. A consumer requesting that a freeze be removed must provide proper identification and the consumer's personal identification number or password given by the consumer reporting agency at the time of the freeze. The freeze must be removed within three days after receiving the request.

If a security freeze is in place, a consumer reporting agency may not change specified information about the consumer in the report without sending a written confirmation to the consumer within 30 days after the change is posted.

Generally, a consumer reporting agency may not charge a fee for any service relating to a security freeze. However, a consumer reporting agency may charge: (1) a fee of up to \$5 for a request to temporarily lift or remove a security freeze; and (2) a reasonable fee, up to \$5, if the consumer loses the unique identifier or password and the agency must reissue one.

When a consumer is entitled to receive a summary of rights under the federal Fair Credit Reporting Act (FCRA) or Maryland law governing consumer reporting agencies, the consumer reporting agency must include with the summary a notice containing specified information about placing a security freeze under the bill.

If a consumer reporting agency violates a security freeze, the agency must notify the consumer, within five business days after the release, of the information released and the name and address of the person who received it. A consumer reporting agency that knowingly violates a security freeze is liable to the consumer for: (1) a penalty of up to \$1,000 for each violation; (2) actual damages sustained by the consumer as a result of the violation; and (3) reasonable expenses, court costs, investigative costs, and attorney's fees.

The bill does not apply to the use of a consumer's credit report by: (1) a person, or a subsidiary, affiliate, agent, or assignee of the person, with which the consumer has or had an account, contract, or debtor-creditor relationship for specified purposes; (2) a subsidiary, affiliate, agent, or perspective assignee of a person that was given access to the credit report for the purpose of facilitating an extension of credit to the consumer or another permissible use; (3) a person acting in accordance with a court order, warrant, or subpoena; (4) a unit of State or local government for specified purposes, including enforcement of child support and investigations relating to the collection of taxes; (5) a person administering a credit file monitoring subscription service to which the consumer has subscribed; or (6) a person providing the consumer, at the consumer's request, with a copy of his or her credit report on request.

When a business is destroying a customer's records containing the customer's personal information, the business must take all reasonable steps to destroy or arrange for the destruction of the records in a manner that makes the information unreadable or undecipherable. A business that owns or licenses personal information of a Maryland resident must implement and maintain reasonable and appropriate security procedures and practices to protect the personal information from unauthorized access, destruction, use, modification, or disclosure. A business that discloses personal information under a contract with a nonaffiliated third party must require by contract that the third party comply with these requirements.

A business that owns, licenses, or maintains records that include a Maryland resident's personal information must notify that individual of a breach of the security of a system if, as a result of the breach, the individual's personal information: (1) has been acquired by an unauthorized person; or (2) is reasonably believed to have been acquired by an unauthorized person. Generally, the notice must be given as soon as practicable after the business discovers or is notified about the breach. The notification may be delayed: (1) if a law enforcement agency determines that it will impede a criminal investigation; or (2) to determine the scope of the breach and restore the system's integrity. The notification may be given by written notice, electronic notice, or substitute notice as specified under the bill.

A business must notify the Office of the Attorney General of the breach within 24 hours after it becomes aware of the breach. A waiver of the bill's notification requirements is void and unenforceable.

Compliance with the notification requirements does not relieve a business from a duty to comply with any other legal requirements relating to the protection and privacy of personal information.

In addition to the penalties under the Consumer Protection Act, an individual who is affected by a violation may bring a civil action against a violator to recover reasonable attorney's fees and the greater of \$500 per violation or actual damages.

Current Law: Under FCRA, a consumer reporting agency must, upon request, disclose to the consumer: (1) all the information in the consumer's file except that information concerning credit scores or any other risk scores or predictors; (2) the source of the information; and (3) the identification of each person that obtains a consumer's report during specified periods. When making the disclosure, the consumer reporting agency must include: (1) a written summary of the consumer's rights under FCRA and the federal Fair and Accurate Credit Transactions Act (FACT Act); and (2) in the case of a nationwide consumer reporting agency, a toll-free telephone contact number.

Under Maryland law, a consumer reporting agency must, upon request and proper identification, provide the consumer with: (1) an exact copy of any file on that consumer; (2) a written explanation of codes or trade language used; (3) a description of the consumer's rights under the Maryland laws governing consumer reports and consumer reporting agencies; and (4) the name, address, and telephone number of the Commissioner of Financial Regulation.

Under the FACT Act, which amends various sections of FCRA, 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 identity theft no later than

four business days after the date the agency received specified information from 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 identity theft; (2) an identity 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.

A business's practices regarding records that contain personal information is not specifically regulated.

The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. Upon receiving a complaint, the division must determine whether there are "reasonable grounds" to believe that a violation of the Act has occurred. Generally, if the division does find reasonable grounds that a violation has occurred, the division must seek to conciliate the complaint. The division may also issue cease and desist orders, or seek action in court, including an injunction or civil damages, to enforce the Act. Violators of the Act are subject to: (1) civil penalties of \$1,000 for the first violation and \$5,000 for subsequent violations; and (2) criminal sanction as a misdemeanor, with a fine of up to \$1,000 and/or up to one year's imprisonment.

State Expenditures: It is estimated that approximately 2.5 million Maryland residents have a consumer report regarding their credit history. If 10% of these individuals (250,000 individuals) placed security freezes under the bill and 1% of those had a complaint during the course of a year, the Commissioner of Financial Regulation would experience an increase of 2,500 complaints annually. In order to process and investigate these complaints, general fund expenditures could increase by an estimated \$43,034 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. This estimate reflects the cost of hiring one financial examiner to process and investigate complaints brought under the credit freeze provisions of the bill. It includes a salary, fringe benefits, one-time start-up costs, examiner travel, and ongoing operating expenses.

Salary and Fringe Benefits	\$36,714
Examiner Travel	1,125
Other Operating Expenses	<u>5,195</u>
Total FY 2007 State Expenditures	\$43,034

Future year expenditures reflect: (1) a full salary with 4.6% annual increases and 3% employee turnover; (2) 1% annual increases in ongoing operating expenses; and (3) equipment replacement in fiscal 2010.

Additional Information

Prior Introductions: Bills containing similar provisions were introduced during the 2005 session. HB 1569 contained provisions governing security freezes; it received an unfavorable report from the House Economic Matters Committee. SB 1002 and HB 1588 contained provisions governing breaches of databases containing personal information. SB 1002 was referred to the Senate Rules Committee, and HB 1588 was referred to the House Economic Matters Committee. Both of these bills were withdrawn before being heard.

Cross File: None.

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

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ncs/jr

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