

HB 1202**Department of Legislative Services**
Maryland General Assembly
2006 Session**FISCAL AND POLICY NOTE**
Revised

House Bill 1202

(Delegate Zirkin, *et al.*)

Economic Matters

Finance

Consumer Protection - Consumer Reporting Agencies - Consumer Reports - Security Freezes

This bill authorizes a consumer, with specified exceptions, to elect to place a security freeze on the consumer's consumer report by written request sent by certified mail, telephone, electronic mail, or on the web site of a consumer reporting agency under specified circumstances.

The bill takes effect January 1, 2007.

Fiscal Summary

State Effect: General fund expenditures could increase by approximately \$30,300 in FY 2007 to process and investigate complaints under the bill by the Commissioner of Financial Regulation. Future years reflect annualization and inflation.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	30,300	52,300	55,400	60,700	62,200
Net Effect	(\$30,300)	(\$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 or on the consumer reporting agency's web site, 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 or temporary lifting of the freeze.

While the freeze is in place, a consumer reporting agency may not provide any information in a consumer's report 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 person requests access to a consumer's report while a security freeze is in place for a purpose other than one allowed under the bill, the consumer reporting agency must notify the consumer of the attempt. The notice must state the identity of the person requesting access and the purpose of the request.

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 five 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.

Generally, a consumer may not be charged for any service relating to a security freeze. However, a consumer reporting agency may charge a reasonable fee of up to \$5 for specified purposes.

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. In addition to any other penalties that may be available, a consumer who is affected by a violation of the bill may bring an action against the violator. In such an action, the consumer may recover: (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.

Under specified circumstances, a check services or fraud prevention services company, a deposit account information service company, or a credit rating agency are not required to place a security freeze on a consumer's report. However, they must respect a freeze placed through other consumer reporting agencies.

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; (6) a person for the purpose of prescreening, as defined under FCRA; or (7) a person providing the consumer, at the consumer's request, with a copy of his or her credit report on request.

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.

Generally, a consumer reporting agency or user of information that willfully fails to comply with any requirement imposed under Maryland law governing consumer reporting agencies is liable to an affected consumer for: (1) actual damages; (2) punitive damages allowed by the court; or (3) reasonable attorney's fees and the costs of the action. For negligent failure to comply, a consumer reporting agency is liable for: (1) actual damages; and reasonable attorney's fees and costs. A person who furnishes information to a consumer reporting agency or a user of the information is not liable for failure to comply under specified circumstances.

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.

State Expenditures: It is estimated that approximately 2.5 million Maryland residents could 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 \$30,311 in fiscal 2007, which accounts for the bill's January 1, 2007 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.

Positions	1
Salary and Fringe Benefits	\$24,476
Examiner Travel	750
Other Operating Expenses	<u>5,085</u>
Total FY 2007 State Expenditures	\$30,311

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: A similar bill, HB 1569 of 2005, received an unfavorable report from the House Economic Matters 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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