

Department of Legislative Services
 Maryland General Assembly
 2007 Session

FISCAL AND POLICY NOTE

House Bill 470 (Delegate Smigiel, *et al.*)
 Economic Matters

Commercial Law - Consumer Reporting Agencies - Consumer Reports - Security Freezes

This bill authorizes a consumer, with specified exceptions, to elect to place a security freeze on all or part of the consumer’s consumer report (sometimes referred to as a credit report) by written request sent by certified mail, telephone, or electronic mail under specified circumstances.

Fiscal Summary

State Effect: General fund expenditures could increase by approximately \$44,100 in FY 2008 to process and investigate complaints. Future years reflect annualization and inflation.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	44,100	53,500	56,300	61,300	62,500
Net Effect	(\$44,100)	(\$53,500)	(\$56,300)	(\$61,300)	(\$62,500)

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 freeze is requested by electronic mail, the freeze must be placed within three business days.

Within five business 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; 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'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 any person requests access to a consumer report while a freeze is in place for a purpose other than account review, the consumer reporting agency must: (1) notify the consumer; and (2) 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: (1) comply with the request within three business days after receipt; and (2) develop procedures to receive and process a request in an expedited manner under specified circumstances.

If, in connection with an application for credit, a person requests access to a consumer report while a security freeze is in place and is denied access, the person may treat the application as incomplete. If access is requested in connection with a third party request to access a consumer's report for specified reasons, the consumer reporting agency must notify the consumer that an attempt has been made to access the consumer's credit.

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, in which case the agency must notify the consumer in writing at least five business days before removing the freeze. A consumer requesting freeze removal 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 business days after receiving the request.

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 a reasonable fee, up to \$5, to replace the personal identification number or password.

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 remedies, a consumer may recover in an action brought under the bill: (1) a penalty of up to \$10,000 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. A consumer may also bring an action for injunctive relief to prevent further violations of a security freeze.

The bill does not apply to the use of a consumer report by:

- 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;
- a subsidiary, affiliate, agent, or assignee of a person that was given access to the report for the purpose of facilitating an extension of credit to the consumer or another permissible use;
- a person acting in accordance with a court order, warrant, or subpoena;
- a unit of State or local government for specified purposes, including enforcement of child support and investigations relating to the collection of taxes;
- a person administering a credit file monitoring subscription service to which the consumer has subscribed; or
- a person providing the consumer, at the consumer's request, with a copy of his or her consumer 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.

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: Approximately 2.5 million Maryland residents are estimated to have a consumer report regarding their credit history. If 10% of them (250,000) 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 \$44,123 in fiscal 2008, which accounts for the bill's October 1, 2007 effective date. This estimate reflects the cost of hiring one financial examiner to process and investigate complaints brought under the bill. It includes a salary, fringe benefits, one-time start-up costs, examiner travel, and ongoing operating expenses.

Salary and Fringe Benefits	\$37,750
Examiner Travel	1,125
Other Operating Expenses	<u>5,248</u>
Total FY 2008 State Expenditures	\$44,123
Positions	1

Future year expenditures reflect: (1) a full salary with 4.5% annual increases and 3% employee turnover; (2) 1% annual increases in ongoing operating expenses; and (3) equipment replacement in fiscal 2011.

Additional Information

Prior Introductions: Similar bills were introduced during the 2006 and 2005 sessions. HB 1202 of 2006, as amended, passed the House and was referred to the Senate Finance Committee, where no further action was taken. Also in 2006, SB 487 received an unfavorable report from Finance, and HB 1100 received an unfavorable report from the House Economic Matters Committee. HB 1569 of 2005 received an unfavorable report from Economic Matters.

Cross File: None.

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

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