

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 52
 Finance

(Senator Forehand, *et al.*)

Economic Matters

**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 (sometimes referred to as a credit 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, 2008.

Fiscal Summary

State Effect: General fund expenditures could increase by approximately \$31,000 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	31,000	53,500	56,300	61,300	62,500
Net Effect	(\$31,000)	(\$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 identifying information. The consumer reporting agency must place the freeze within five business days after receiving the request. This period decreases to three business days beginning July 1, 2008. Consumer reporting agencies that meet certain criteria are exempted from placing a security freeze on consumer reports.

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 reporting agency may not release a consumer's report or information therein 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 temporarily lift a security freeze, 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. Beginning February 1, 2009, the consumer reporting agency must provide a temporary thaw that the consumer requests by telephone, electronic mail, or on the agency's web site within 15 minutes after receiving the request during normal business hours, or as soon as practicable.

If a person requests access to a consumer's consumer 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 or if the consumer failed to follow specified procedures, in which case the agency must notify the consumer in writing at least five business days before removing the freeze. A consumer requesting that a freeze be removed must contact the consumer reporting agency in the manners prescribed, provide proper identifying information, and provide an identification

number or password issued by the agency. The freeze must be removed within three business 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 each placement, temporary lift, or removal of a security freeze.

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 contact information for the person who received it.

The bill does not apply to the use of a consumer's credit 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 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;
- 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;
- a person for the purpose of prescreening, as defined under FCRA;
- a person providing the consumer, at the consumer's request, with a copy of his or her consumer report on request; or
- to the extent permitted under State law, a person for use only in setting or adjusting an insurance rate, adjusting an insurance claim, or underwriting an insurance risk.

The bill's requirements do not generally apply to certain check services or fraud prevention companies, deposit account information services companies, or specified consumer reporting agency databases and files.

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.

A consumer who has reason to believe that a consumer reporting agency has violated the laws governing consumer reporting agencies or consumer credit may file a complaint with the Commissioner of Financial Regulation. After a hearing, the commissioner may impose a civil penalty of up to \$100 for each violation and issue a cease and desist order. If a person fails to comply with the commissioner's order, the commissioner may bring an action in circuit court to compel compliance.

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 \$31,037 in fiscal 2008, which accounts for the bill's January 1, 2008 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	\$25,167
Examiner Travel	750
Other Operating Expenses	<u>5,120</u>
Total FY 2008 State Expenditures	\$31,037

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. In 2006, HB 1202 was amended and passed the House, but it received an unfavorable report from the Senate Finance Committee. Also in 2006, SB 487 and SB 631, which also contained provisions to protect an individual's "personal information," received hearings in the Senate Finance Committee, where no further action was taken. HB 1100

of 2006 and HB 1560 of 2005 received unfavorable reports from the House Economic Matters Committee.

Cross File: None.

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

Fiscal Note History: First Reader - January 23, 2007
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