

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

Senate Bill 295

(Senator Astle, *et al.*)

Finance

Economic Matters

Commercial Law - Security Freezes - Minors and Protected Persons

This bill establishes a procedure by which a protected consumer's representative may request that a consumer reporting agency place a security freeze on the protected consumer's consumer report.

The bill takes effect January 1, 2013.

Fiscal Summary

State Effect: Any increase in the workload for the Office of the Commissioner of Financial Regulation to investigate complaints against consumer reporting agencies can likely be handled with existing budgeted resources. However, to the extent that the number of complaints increases significantly due to the bill's changes, additional personnel may be required to handle complaints. The imposition of existing penalty provisions does not have a material impact on State finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Definitions: "Protected consumer" means an individual who is (1) younger than age 16 at the time a request for the placement of a security freeze is made; or (2) an incapacitated

person or a protected person for whom a guardian or conservator has been appointed in accordance with Title 13 of the Estates and Trusts Article.

“Record” means a compilation of information that (1) identifies a protected consumer; (2) is created by a consumer reporting agency solely for the purpose of complying with the bill’s requirements; (3) may not be created or used to consider the protected consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living for a specified purpose.

The bill defines “representative” as a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

“Security freeze” means, if a consumer reporting agency does not have a file pertaining to a protected consumer, a restriction that is appropriately placed on the protected consumer’s record and prohibits the consumer reporting agency from releasing the protected consumer’s record except as provided by the bill. However, if a consumer reporting agency has a file pertaining to the protected consumer, “security freeze” means a restriction that is appropriately placed on the protected consumer’s consumer report or any information derived from the protected consumer’s consumer report except as provided by the bill.

The bill defines “sufficient proof of identification” as information or documentation that identifies a protected consumer or a representative of a protected consumer, including specified forms of identification issued by a government entity or a copy of a utility bill that shows a name and home address.

Applicability: The bill does not apply to the use of a protected consumer’s consumer report or record by:

- a person administering a credit file monitoring subscription service to which either a protected consumer has subscribed or the representative of the protected consumer has subscribed on behalf of the protected consumer;
- a person providing the protected consumer or the protected consumer’s representative with a copy of the protected consumer’s consumer report on request of the protected consumer or the protected consumer’s representative; and
- other specified entities.

Placement and Removal of a Security Freeze for a Protected Consumer: The bill requires a consumer reporting agency to place a security freeze for a protected consumer if the agency receives such a request from the protected consumer’s representative. The agency must place the freeze within 30 days of receipt of the request. The representative must (1) submit the request to the agency at the address or other point of contact and in

the manner specified by the agency; (2) provide sufficient proof of identification of the protected consumer and the representative; (3) provide sufficient proof of authority to act on behalf of the protected consumer; and (4) pay a reasonable fee of up to \$5. If a consumer reporting agency does not have a file pertaining to a protected consumer when the agency receives a request, the agency must create a record.

The bill prohibits a consumer reporting agency from releasing the protected consumer's consumer report, any information derived from the report, or any record created for the protected consumer, unless a security freeze is removed. The bill establishes a procedure, similar to the procedure to request a security freeze, by which a protected consumer or the representative may request the agency to remove the security freeze. The agency must remove the freeze within 30 days of receipt of the request. An agency may charge a reasonable fee of up to \$5 for the removal of a security freeze. The agency may also remove a security freeze for a protected consumer or delete a record of a protected consumer if the freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

The bill prohibits a consumer reporting agency from charging a fee for any service related to a security freeze other than its placement and removal. Additionally, an agency may not charge a fee for the placement and removal of the security freeze in specified circumstances.

The exclusive remedy for a violation of the bill's provisions is a complaint filed with the Office of the Commissioner of Financial Regulation.

Current Law: Chapters 307 and 308 of 2007 authorized a consumer to place a security freeze on the consumer's consumer report and specified the rights and responsibilities associated with placing and lifting security freezes. A "security freeze" means a restriction placed on a consumer's consumer report at the request of the consumer that prohibits a consumer reporting agency from releasing the consumer's consumer report or any information derived from the consumer's consumer report without the consumer's express authorization.

A consumer may elect to place a security freeze on the consumer's consumer report by various methods. However, if a consumer requests a security freeze over the phone, the consumer reporting agency may require the consumer to confirm the request on a form provided by the agency. If the consumer fails to return the form, the consumer reporting agency may remove the freeze.

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 three business days after receiving the request. 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 consumer 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. The consumer reporting agency must provide a temporary thaw that the consumer requests by telephone, electronic mail, or on the agency's website 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 by the consumer, 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 manner 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 or within 15 minutes for certain requests.

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 – unless the consumer provides a copy of a report of alleged identity fraud.

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 and lifting a security freeze.

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 above requirements do not generally apply to specified check services or fraud prevention services companies, deposit account information services companies, or consumer reporting agency databases and files. The requirements do not apply to the use of a consumer's 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 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 obligations and investigations relating to the collection of taxes;
- a person for the purpose of prescreening, as defined under FCRA;
- a person administering a credit file monitoring subscription service to which the consumer has subscribed;
- 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.

Additional Information

Prior Introductions: None.

Cross File: HB 555 (Delegate Zucker, *et al.*) - Economic Matters.

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

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