

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/CS/CS/SB 242

INTRODUCER: Governmental Oversight and Accountability Committee; Judiciary Committee;
Commerce and Tourism Committee; and Senator Detert

SUBJECT: Security of a Protected Consumer's Information

DATE: February 20, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Malcolm</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Cibula</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>McKay</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 242, the Keeping I.D. Safe (KIDS) Act, enables a guardian or other advocate for a protected consumer to place a security freeze on the protected consumer's consumer report. A protected consumer includes a child who is younger than 16 and others who are represented by a guardian or other advocate, often as the result of mental incapacity. A security freeze generally prohibits a consumer reporting agency from releasing information in a consumer report to a third party without express authorization. A security freeze may prevent an unauthorized person from opening lines of credit in a protected consumer's name and engaging in identity theft.

Under the bill, a guardian or advocate who seeks a security freeze must submit a request to the consumer reporting agency along with proof of authority and identification and a fee of up to \$10. The fee is waived if the representative submits a copy of a valid police report about the unlawful use of the protected consumer's identifying information.

The Department of Agriculture and Consumer Services must investigate complaints concerning violations of these consumer information provisions, and may impose an administrative penalty of \$500 for each violation. A person who obtains a consumer report or record under false pretenses or knowingly without a permissible purpose is liable for damages to the protected consumer and the credit reporting agency for at least \$1,000 each. The bill also requires consumer reporting agencies to provide written notice of the availability of a security freezes for protected consumers.

II. Present Situation:

Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) governs the collection, assembly, and use of consumer report information and establishes the framework for the credit reporting system in the United States.¹ The FCRA was enacted to (1) prevent the misuse of sensitive consumer information by limiting access to those with a legitimate need for the information; (2) improve the accuracy and integrity of consumer reports; and (3) promote the efficiency of the nation's banking and consumer credit systems.²

Most significantly, the FCRA regulates the use and dissemination of consumer reports. Consumer reports are used by financial institutions, insurance companies, employers, and other entities in determining a consumer's eligibility for certain products and services.³ Information included in consumer reports may include a consumer's credit and payment history, demographic and identifying information, and public record information (e.g., arrests, judgments, and bankruptcies).⁴

In 2003, the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) amended the FCRA.⁵ The FACT Act added a number of provisions to help consumers and businesses combat identity theft and reduce the damage when identity theft occurs. Among these provisions, the FACT Act established a national fraud alert system, required federal agencies to adopt rules for the disposition of consumer report information and how companies should respond to the "red flag" indicators of identity theft, and required that information placed on a consumer report due to identity theft be blocked from the report.⁶

The FCRA (as amended by the FACT Act) also states that a consumer or the consumer's representative may assert a good-faith suspicion to a consumer reporting agency that he or she has been the victim of identity theft.⁷ This requires the agency to place an initial fraud alert on the consumer report for at least 90 days at no charge to the consumer.⁸ Consumers can also file for an extended fraud alert that lasts up to 7 years.⁹

Security Freezes

In response to concerns regarding identity theft, 49 states, including Florida, have adopted laws that allow a consumer to freeze access to his or her consumer report and prevent anyone from

¹ 15 U.S.C. s. 1681 *et seq.*

² Federal Trade Commission, *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations*, 1 (July 2011), available at <http://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrrreport.pdf>.

³ *Id.*

⁴ *Id.*

⁵ P.L. 108-159, H.R. 2622, 108th Cong. (December 4, 2003).

⁶ *Id.* at s. 112-152. Fraud alerts do not prevent a potential creditor from obtaining the consumer report and may not prevent new credit accounts. *See* 15 U.S.C. s. 1681c-1 and s. 1681m(e).

⁷ 15 U.S.C. s. 1681c-1.

⁸ *Id.* s. 1681c-1(a)(1).

⁹ *Id.* s. 1681c-1(b).

trying to open a new account or new credit.¹⁰ A security freeze restricts a consumer reporting agency from releasing a consumer report or any information from the report without authorization from the consumer. A freeze also requires authorization to change information—such as the consumer’s name, date of birth, Social Security number, and address—in a consumer report. A security freeze remains on a consumer report until the consumer removes it. Generally, a person can temporarily remove the freeze to open a new credit account or apply for a loan. To do this, a consumer provides the consumer reporting agency with a unique personal identifying number to verify the consumer’s identity. States have created exemptions for specified organizations that still can access consumer report information even if a freeze is in place. Typically, these organizations include law enforcement agencies, child support enforcement entities, insurance companies, and subsidiaries and affiliates of companies that have existing accounts with the consumer.¹¹

Florida Statutes Relating to Security Freezes

Section 501.005(2), F.S., allows a consumer to place a “security freeze” on his or her consumer report by sending a written request by certified mail to a consumer reporting agency. Generally, the security freeze prohibits the consumer reporting agency from releasing the consumer’s consumer report or any information contained within the report without the consumer’s authorization.¹² A consumer reporting agency may charge a fee up to \$10 when a consumer elects to place, temporarily lift, or remove a security freeze.¹³ However, the law prohibits a consumer reporting agency from charging a fee to a consumer 65 years or older or to a victim of identity theft for the placement or removal of a security freeze.¹⁴ Any disclosure by a consumer reporting agency to a resident of this state must include a written summary of all rights the consumer has, including the right to place a security freeze on his or her consumer report.¹⁵

In addition to any other penalties or remedies provided under law, a person who is aggrieved by a violation of the provisions of s. 501.005, F.S., may bring a civil action as follows:

- Any person who willfully fails to comply with any requirement imposed under s. 501.005, F.S., is liable to the consumer for actual damages of at least \$100 and not more than \$1,000, plus the costs and attorney’s fees.¹⁶
- Any person who is negligent in failing to comply with any requirement imposed under s. 501.005, F.S., is liable to the consumer for any actual damages of at least \$100 and not more than \$1,000.¹⁷

¹⁰ Consumers Union, *Consumers Union’s Guide to Security Freeze Protection* (December 31, 2011), <http://defendyourdollars.org/document/guide-to-security-freeze-protection> (last visited January 9, 2014).

¹¹ *See, e.g.*, MISS. CODE ANN. s. 75-24-209 (2013); MONT. CODE ANN. s. 30-14-1734 (2013).

¹² Section 501.005(12), F.S., allows for the release of information otherwise protected by a security freeze to the existing creditors of the consumer, persons who have been granted access to the information according to law, state agencies acting within their lawful investigatory or regulatory authority, law enforcement agencies, persons maintaining credit monitoring services or who provide consumer reports to consumers on their request, persons designated by court order, for credit prescreening or insurance underwriting purposes, and to certain other specified entities.

¹³ Section 501.005(13)(a), F.S.

¹⁴ Section 501.005(13)(b), F.S.

¹⁵ Section 501.005(17), F.S.

¹⁶ Section 501.005(16)(a), F.S.

¹⁷ Section 501.005(16)(d), F.S.

Additionally, any individual who obtains a consumer report under false pretenses or knowingly without a permissible purpose is liable to the consumer for actual damages sustained by the consumer of at least \$100 and not more than \$1,000, whichever is greater.¹⁸ Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose is also liable to the agency for actual damages sustained by the agency or \$1,000, whichever is greater.¹⁹ Punitive damages may be assessed for willful violations of s. 501.005, F.S.²⁰ Lastly, if a court finds an unsuccessful pleading or motion was filed in bad faith or for purposes of harassment, the court must award to the prevailing party attorney's fees incurred for the work performed in responding to the pleading or motion.²¹

Child Identity Theft

Although, reliable estimates on the extent of identity theft against minors have not been thoroughly determined, recent studies have begun to shed light on the problem. A 2012 study by AllClear ID found, based on a review of the credit files of 27,000 American children, that more than 10 percent of children are victims of identity theft.²² Similarly, a 2011 study estimated that 140,000 instances of identity fraud are perpetrated on minors in the United States each year.²³ A recent, Florida-specific analysis of identity theft against minors estimated that approximately 52,000 children in Florida will be victims of identity theft.²⁴

While parents typically apply for a Social Security number for their child shortly after birth, credit reporting agencies do not create credit files until an individual uses his or her Social Security number to apply for credit for the first time - usually in the late teenage years.²⁵ When a credit file is first created, the credit bureaus and lenders do not check the validity of the name and date of birth on a new credit application, only that the Social Security number was issued by the Social Security Administration.²⁶ Consequently, a child's unused Social Security number is valuable to a thief because it typically lacks a previous credit history and can be paired with any name and birth date. If the thief is able to provide a valid Social Security number (one that has been issued and is not reported as belonging to a deceased person) and the minimal identification documentation required by that lender, then he or she is approved for the transaction and the fraudulent account is added to the credit file.²⁷ Because parents typically do not monitor their child's credit, a child's identity can be used to obtain goods and services over many years

¹⁸ Section 501.005(16)(b), F.S.

¹⁹ *Id.*

²⁰ Section 501.005(16)(c), F.S.

²¹ Section 501.005(16)(e), F.S.

²² AllClear ID Alert Network, *Child Identity Theft: Report 2012*, <https://www.allclearid.com/themes/allclearid/docs/ChildIDTheftReport2012.pdf>.

²³ ID Analytics, *More than 140,000 Children Could be Victims of Identity Fraud Each Year* (July 12, 2011), available at <http://www.idanalytics.com/news-and-events/news-releases/2011/7-12-2011.php> (last visited January 9, 2014).

²⁴ Department of Agriculture and Consumer Services, *Child Identity Fraud in Florida: An Analysis of the Extent of the Crime and Potential Effectiveness of Proposed Policies*, 2 (October 8, 2013) (on file with the Senate Committee on Commerce and Tourism).

²⁵ AllClear ID Alert Network, *supra* note 22.

²⁶ *Id.* at 9.

²⁷ *Id.*

without the parents' knowledge. The identity theft may not be detected until the child becomes an adult, seeks employment, or applies for student or car loans.

Current statutory security freezes only apply to existing consumer reports. Because minors generally do not have credit history they do not have consumer reports and thus cannot get a security freeze.²⁸ A credit history can be established for a minor through a parent adding the minor as a joint account holder. According to Experian, the agency does not knowingly disclose a minor's credit history; however, minors may request a copy of their consumer report after the age of 14.²⁹ Parents or legal guardians may request a consumer report for their minor by providing documentation that they are the parent or guardian. When a minor reaches the age of 18, the consumer report becomes available for access by authorized persons.

In addition to the penalties and remedies under s. 501.005, F.S., relating to consumer reports and security freezes for adults, s. 817.568, F.S., addresses criminal penalties for the unauthorized use of personal identification information. In regards to minors, s. 817.568, F.S., makes it a second-degree felony for:

- Any person to willfully and fraudulently use personal identification information concerning an individual who is less than 18 years of age without first obtaining the consent of that individual or legal guardian.
- Any person who is a parent or legal guardian, or who otherwise exercises custodial authority over an individual who is less than 18 years of age, to willfully and fraudulently use personal identification information of that individual.

III. Effect of Proposed Changes:

Section 1 identifies the bill as the "Keeping I.D. Safe (KIDS) Act."

Section 2 creates s. 501.0051, F.S., to establish a process by which a security freeze on a consumer report may be undertaken for a person younger than 16 years of age, or a person represented by a guardian or other advocate.

Definitions for the terms "consumer reporting agency" and "consumer report" are identical to the definitions in s. 501.005, F.S. The term "protected consumer" means a person younger than 16 years of age or a person represented by a guardian or other advocate pursuant to ch. 39,³⁰ ch. 393,³¹ ch. 744,³² or ch. 914,³³ F.S. A "record" is defined as a compilation of information that identifies a protected consumer and that is created if a consumer does not have a consumer report. The definition of security freeze is similar to the current definition found in s. 501.005,

²⁸ A spokesman for TransUnion and Equifax has explained that a security freeze "applies to a credit file, not a social security number." Carns, Ann, *Why It's Not Easy to Freeze Your Child's Credit File*, THE NEW YORK TIMES, (September 21, 2011), available at <http://bucks.blogs.nytimes.com/2011/09/21/why-its-not-easy-to-freeze-your-childs-credit-file/>.

²⁹ See Experian, Credit Reports not Established Based on Age (September 14, 2011), <http://www.experian.com/ask-experian/20110914-credit-reports-not-established-based-on-age.html>.

³⁰ Chapter 39, F.S., pertains to proceedings relating to children.

³¹ Chapter 393, F.S., relates to developmental disabilities.

³² Chapter 744, F.S., relates to guardianships.

³³ Chapter 914, F.S., relates to witnesses and criminal proceedings, including guardians ad litem.

F.S., and also includes a notice placed on the protected consumer's record that prohibits the consumer reporting agency from releasing the record except as provided in s. 501.0051, F.S.

Security Freeze

The bill authorizes the representative of a protected consumer to place a security freeze on a protected consumer's consumer report or record by submitting a request to the consumer reporting agency, providing sufficient proof of authority and identification, and paying the agency a maximum fee of \$10. The representative must submit a request to a consumer reporting agency in the manner prescribed by the agency. The fee must be waived if the representative submits a copy of a valid investigative report, incident report, or complaint with law enforcement about the unlawful use of the protected consumer's identifying information.

If a consumer report does not exist for a protected consumer, the consumer reporting agency is required to create a consumer record. The consumer reporting agency is required to place a security freeze on a consumer report or record within 30 days³⁴ after confirming the request and must send a written confirmation of the security freeze within 10 business days after creating the security freeze. Once the security freeze is in effect, a consumer reporting agency cannot change the name, address, date of birth, or Social Security number without sending written confirmation to the consumer within 30 days after the change is posted to the consumer report or record. The consumer reporting agency is also required to provide instructions and a unique personal identifier for removing the security freeze. The consumer reporting agency is authorized to charge a fee not to exceed \$10 if the representative loses the personal identifier and a new one must be issued.

The bill also delineates the procedures and documents required of the representative or protected consumer for the removal of the security freeze. A representative must provide sufficient proof of authority and identification, the unique personal identifier, and payment of the \$10 fee. A protected consumer can also request removal of the security freeze by providing proof of identification, payment of the \$10 fee, as well as documentation that the authority for the representative to act on behalf of the protected consumer is no longer valid. The consumer reporting agency must remove the security freeze within 30 days.

Once a security freeze has been created, the consumer reporting agency cannot state or imply to any person that the security freeze reflects a negative credit score, a negative credit history, or a negative credit rating. Certain persons and entities, for specified reasons, are allowed to access a consumer report or record subject to a security freeze. These exemptions are similar to the exemptions found in s. 501.005, F.S. However, the bill also allows access and use of a consumer report or record for personal insurance policy information and noncredit information used for insurance purposes.

The bill requires a consumer reporting agency that violates a security freeze by releasing information without proper authorization to notify the representative of the protected consumer within 5 business days after the discovery or notification of the release. If the security freeze was

³⁴ The bill does not indicate whether these are calendar days or business days. However, because any time period in the bill less than 30 days is specifically identified as "business" days, it is assumed that the 30-day time periods in the bill are calendar days. This reasoning is consistent with the time periods provided in s. 501.005, F.S.

created due to a material misrepresentation, the consumer reporting agency must provide written notification to the representative and protected consumer before removing the security freeze.

Penalties and Remedies

A consumer reporting agency that willfully fails to comply with the statutory requirements may be subject to an administrative fine of \$500 per violation, imposed by the Department of Agriculture and Consumer Services, which must investigate complaints concerning the provisions in this bill. The bill provides a private right of action for certain violations. A person who obtains a consumer report or record under false pretenses or knowingly without a permissible purpose is liable to the representative and protected consumer for the greater of \$1,000 or the actual damages sustained. A person who obtains a consumer report or record under false pretenses or knowingly without a permissible purpose is liable to the consumer reporting agency for actual damages sustained by the agency or \$1,000, whichever is greater.

Written Disclosures

The bill requires consumer reporting agencies to provide a written disclosure of the availability of security freezes for protected consumers. The disclosure provides notice that if a person is a custodial parent or legal guardian of a minor younger than 16 years of age or a guardian or advocate of an incapacitated, disabled, or protected person under ch. 39, ch. 393, ch. 744, or ch. 914, F.S., he or she has the right to place a security freeze on the consumer report of the person in his or her care. If there is no consumer report, the parent, guardian, or advocate may request the creation of a consumer record and the placement of a security freeze on that record. The disclosure warns that using a security freeze may delay or prohibit access to credit, insurance, employment, or other services, and it explains that a security freeze does not apply to entities with which the protected consumer has an existing account. The disclosure provides the procedure for removing the security freeze and releasing the consumer record or report. It also provides notice of the right to bring a civil action.

Section 3 provides that the bill will take effect September 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Credit reporting agencies may incur additional costs to establish security freezes for minors and other individuals covered under the bill. However, the credit reporting agencies are permitted to charge up to a \$10 fee in most cases to create a security freeze. Receipt of the fee will help minimize costs to the credit reporting agencies.

With the increasing incidence of child identity theft, the creation of security freezes for consumer reports and records of minors under age 16 and other persons represented by a guardian or advocate may provide additional safeguards against identity theft.³⁵

C. Government Sector Impact:

The Department of Agriculture and Consumer Services believes the bill will have no fiscal impact on the department.³⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill and s. 501.005, F.S., differ in a number of ways. The bill does not contain the same remedies and penalties found in s. 501.005, F.S., related to adult security freezes. Section 501.005(16)(c), F.S., authorizes the assessment of punitive damages for willful violations of that section. Section 501.005(16)(d), F.S., provides that any person who is negligent in failing to comply with the provisions of that section is liable to the consumer for any actual damages sustained by the consumer because of the failure of at least \$100 and not more than \$1,000. Section 501.005(16)(e), F.S., also allows the court to award reasonable attorney's fees to the prevailing party in an action that is filed in bad faith or for purposes of harassment. The bill does not contain any similar provisions.

The bill provides that a consumer reporting agency has up to 30 days to remove a security freeze following a request for removal by the protected consumer or representative, rather than 3 business days as required for security freezes under s. 501.005, F.S. Additionally, unlike s. 501.005(6), F.S., which allows for temporary holds of a security freeze upon the consumer's request, the bill does not contain a similar provision for temporary holds. The extended time period for removing a security freeze and the lack of temporary hold provision in the bill could

³⁵ Department of Agriculture and Consumer Services, *Senate Bill 242 Agency Analysis* (October 23, 2013) (on file with the Senate Committee on Commerce and Tourism).

³⁶ *Id.*

result in a significant delay for a teenager applying for a car loan, seeking employment, or applying for an apartment lease, even if the parents are co-signing for the loan or lease.

Like s. 501.005, F.S., the bill exempts certain transactions from the security freeze, thereby allowing access to information contained in a consumer report. However, unlike s. 501.005, F.S., the bill also allows the use of the protected consumer report or record by a consumer reporting agency's database or file that is used exclusively for personal insurance policy information and noncredit information used for insurance purposes.

The bill also requires the consumer reporting agency to place a security freeze on a consumer report or record within 30 days after confirming the authenticity of the request. However, s. 501.005(3), F.S., requires a consumer reporting agency to place a security freeze within 5 business days after receiving a request for a security freeze.

Section 501.005(2)(a), F.S., requires a request for a security freeze be submitted in writing by certified mail to the consumer reporting agency. However, the bill provides that the representative would submit a request to a consumer reporting agency in the manner prescribed by the agency. How each consumer reporting agency will require requests for security freezes to be made is not known.

The bill gives the authority to the Department of Agriculture and Consumer Services to impose, pursuant to the administrative procedures of Ch. 120, F.S., an administrative fine of \$500 on "a consumer reporting agency that willfully fails to comply with any requirement imposed under" the substantive requirements of the bill. In order to impose this penalty, the department will therefore need to be able to prove "willful" noncompliance. As written, the department may have the discretion to impose one fine for multiple violations of a requirement; if the Legislature wants the administrative penalty to attach to each incident of a violation, it should so specify.

VIII. Statutes Affected:

This bill creates section 501.0051, Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Governmental Oversight and Accountability on February 20, 2014:

The committee substitute makes a clarifying technical change, and requires the Department of Agriculture and Consumer Services to investigate complaints of violations of the bill provisions. The department may impose an administrative penalty of \$500 per violation, and must deposit any collected penalties in the General Inspection Trust Fund.

CS/CS by Judiciary on January 14, 2014:

The committee substitute:

- Allows a parent of a protected consumer to establish his or her authority to act on behalf of the protected consumer by providing a copy of the protected consumer's birth certificate.

- Removes provisions from the underlying committee substitute which authorized the representative of a protected consumer to obtain the consumer report of the protected consumer during a security freeze.
- Makes technical and grammatical changes.

CS by Commerce and Tourism on November 4, 2013:

The committee substitute:

- Identifies the act as the “Keeping I.D. Safe (KIDS) Act;”
- Removes language that would have allowed a consumer report to be created after a security freeze was initiated;
- Clarifies that when a protected consumer requests to remove a security freeze, he or she must pay a fee not to exceed \$10 to the consumer reporting agency; and
- Clarifies the notice that must be provided to representatives regarding their right to pursue civil remedies for violations of the Act.

B. Amendments:

None.