

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 Commerce and Tourism

BILL: SB 242

INTRODUCER: Senator Detert

SUBJECT: Security of a Protected Consumer's Information

DATE: November 1, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	Pre-meeting
2.			JU	
3.			GO	
4.				
5.				
6.				

I. Summary:

SB 242 establishes a procedure by which a guardian of a person younger than 16 years of age or a guardian or advocate of a person represented by that guardian or advocate can request a consumer reporting agency place a security freeze on the protected consumer's consumer report or record. The security freeze prohibits consumer reporting agencies from releasing the consumer report or record or any information contained within the report or record, such as a credit score, without the authorized consent of the consumer's representative except in certain circumstances. The security freeze is designed to protect a consumer by preventing an unauthorized person from opening lines of credit in the consumer's name and engaging in identity theft.

The bill requires the representative requesting a security freeze submit a request to the consumer reporting agency, provide proof of authority and identification, and pay a fee up to \$10 to the agency. 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. A consumer reporting agency's willful failure to comply with the security freeze will result in an administrative fine of \$500. A person who obtains a consumer report or record under false pretenses or knowingly without a permissible purpose is liable for damages to the 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 freeze for people younger than 16 years of age or represented by a legally appointed guardian or advocate.

This bill creates s. 501.0051, F.S.

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 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/os/2011/07/110720fcrrareport.pdf> (last visited Oct. 28, 2013).

³ *Id.*

⁴ *Id.*

⁵ P.L. 108-159, H.R. 2622, 108th Cong. (Dec. 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, m(e).

⁷ 15 U.S.C. s 1681c-1.

⁸ *Id.* at (a)(1).

⁹ *Id.* at (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 not less than \$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 not less than \$100 and not more than \$1,000.¹⁷

¹⁰ Consumers Union, *Consumers Union’s Guide to Security Freeze Protection*, available at <http://defendyourdollars.org/document/guide-to-security-freeze-protection> (last visited Oct. 25, 2013).

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 *Id.* at (13)(a).

¹⁴ *Id.* at (13)(b).

¹⁵ *Id.* at (17).

¹⁶ *Id.* at (16)(a).

¹⁷ *Id.* at (16)(d).

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 not less than \$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 shall 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 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.

¹⁸ *Id.* at (16)(b).

¹⁹ *Id.*

²⁰ *Id.* at (16)(c).

²¹ *Id.* at (16)(e).

²² AllClear ID Alert Network, Child Identity Theft: Report 2012, *available at* <https://www.allclearid.com/themes/allclearid/docs/ChildIDTheftReport2012.pdf> (last visited Oct. 28, 2013).

²³ ID Analytics, *More than 140,000 Children Could be Victims of Identity Fraud Each Year* (News Release July 12, 2011), *available at* <http://www.idanalytics.com/news-and-events/news-releases/2011/7-12-2011.php> (last visited Oct. 25, 2013).

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 (Oct. 8, 2013).

²⁵ AllClear ID Alert Network, Child Identity Theft: Report 2012 at 22.

²⁶ *Id.* at 9.

²⁷ *Id.*

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 creates s. 501.0051, F.S., to establish a process to allow the institution of a security freeze 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, 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

²⁸ A spokesman for TransUnion and Equifax has explained that a security freeze “applies to a credit file, not a social security number.” Carrins, Ann, *Why It's Not Easy to Freeze Your Child's Credit File*, The New York Times, (Sept. 21, 2011), available at <http://bucks.blogs.nytimes.com/2011/09/21/why-its-not-easy-to-freeze-your-childs-credit-file/> (last visited Oct. 28, 2013).

²⁹ See Experian website at <http://www.experian.com/ask-experian/20110914-credit-reports-not-established-based-on-age.html> (last visited Oct. 28, 2013).

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 guardian ad litem.

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 is 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 of 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 and obtaining copies of the consumer report or record. 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 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 must notify the representative of the protected consumer within 5 business days after the discovery or notification of the release. If the security freeze was 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.

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.

Penalties and Remedies

A consumer reporting agency that willfully fails to comply with the bill's requirements would be subject to an administrative fine of \$500 issued by the Department of Agriculture and Consumer Services. 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 placing a security freeze on a protected consumer's consumer report or record. 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 rights and remedies available.

Section 2 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 will be able 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 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 not less than \$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 was 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 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

³⁵ Department of Agriculture and Consumer Services, *Senate Bill 242 Agency Analysis* (Oct. 23, 2013).

³⁶ *Id.*

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.

Finally, 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. It is unclear whether each consumer reporting agency would require certified mail or some other method, such as email.

VIII. Additional Information:

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

None.

B. Amendments:

None.