

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 Banking and Insurance

BILL: SB 1302

INTRODUCER: Senator Brandes

SUBJECT: Consumer Report Security Freezes

DATE: January 29, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Pre-meeting
2.			CM	
3.			RC	

I. Summary:

SB 1302 prohibits consumer reporting agencies from charging a consumer or a consumer's representative fees for placing, removing, or temporarily lifting a security freeze on a consumer report. A security freeze prevents a consumer reporting agency from releasing the consumer report, credit score, or any information contained within the consumer report to a third party without the express authorization of the consumer. Once a consumer puts a credit freeze in place, he or she receives a personal identifier to use each time to freeze, unfreeze, and refreeze their account. A credit freeze prevents individuals from accessing a consumer's credit report to open a new account, such as a credit card. Currently, Florida law permits a consumer reporting agency to charge a fee not exceeding \$10 for such actions.

In recent years, data breaches¹ have been increasing in frequency, scale, sophistication, and severity of impact. In late 2013, Target experienced a data breach that provided cybercriminals with access to 41 million customer payment card accounts² (customer name, credit or debit card number, and the card's expiration date) and contact information for more than 60 million Target customers.³ In 2017, Equifax, one of the three major credit-reporting agencies in the United States, reported that the sensitive personal information of an estimated 143 million American

¹ A data breach occurs when a cybercriminal successfully infiltrates a data source and extracts sensitive information. This can be done physically by accessing a computer or network to steal local files, or by bypassing network security remotely. See TRENDMICRO, *Data Breaches 101* (Oct. 23, 2015) available at

<https://www.trendmicro.com/vinfo/us/security/news/cyber-attacks/data-breach-101> (last viewed Jan. 24, 2018).

² *Target to pay \$18.5M for 2013 data breach that affected 41 million consumers*, (May 23, 2017), available at <https://www.usatoday.com/story/money/2017/05/23/target-pay-185m-2013-data-breach-affected-consumers/102063932/> (last viewed Jan. 25, 2018).

³ Federal Trade Commission, *Are you affected by the recent Target hack?* <https://www.consumer.ftc.gov/blog/2013/12/are-you-affected-recent-target-hack> (last viewed Jan. 24, 2018).

consumers⁴ was disclosed in a data breach earlier that year. The cybercriminals accessed the names, Social Security numbers, birth dates, and addresses and, in some instances, driver's license numbers of these consumers. They also accessed credit card numbers of about 209,000 consumers and dispute documents with personal identifying information of about 182,000 consumers.⁵

II. Present Situation:

Consumer Reports and Consumer Reporting Agencies

Consumer reports include any written, oral, or other communication of any information by a consumer reporting agency on a consumer's credit worthiness, credit standing, credit capacity, general reputation, personal characteristics, or mode of living.⁶ Consumer reports generally list the consumer's name, address, and Social Security number, credit cards, loans, debts, and history of timely bill payment.⁷ Information contained in such reports are used as a factor in establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes; employment purposes; and other purposes authorized under federal law.⁸

Consumer reporting agencies assemble or evaluate consumer credit information or other information on consumers and furnish consumer reports to third parties.⁹ Consumer reporting agencies generally may provide consumer credit reports and credit scores to lenders, retail stores, employers, residential real estate management companies, payment processors, retail stores, debt buyers and collectors, insurance companies, communications and utility companies.¹⁰ The three largest consumer-reporting agencies are Equifax, Experian, and TransUnion.¹¹

Federal Fair Credit Reporting Act (FCRA)

The federal Fair Credit Reporting Act (FCRA) governs the collection and use of consumer report information and establishes the framework for the credit reporting system in the United States.¹² The FCRA was enacted to prevent the misuse of sensitive consumer information by limiting access to those with a legitimate need for the information; improve the accuracy and integrity of consumer reports; and promote the efficiency of the nation's banking and consumer credit systems.¹³ The FCRA regulates the practices of consumer reporting agencies (e.g., Equifax,

⁴ Equifax, *Cybersecurity Incident and Important Consumer Information*, available at <https://www.equifaxsecurity2017.com/frequently-asked-questions/> (last viewed Jan. 25, 2018). Subsequently, on October 2, 2017, Equifax announced that approximately 2.5 million additional U.S. consumers were potentially impacted.

⁵ Federal Trade Commission, *the Equifax Data Breach: What to Do*, <https://www.consumer.ftc.gov/blog/2017/09/equifax-data-breach-what-do>

⁶ See 15 U.S.C. 1681a(d).

⁷ See 15 U.S.C. 1681c.

⁸ See 15 U.S.C. 1681b.

⁹ See 15 U.S.C. 1681a(f).

¹⁰ Consumer Financial Protection Bureau, *List of Consumer Reporting Companies*, pgs. 4-5 (2016). http://files.consumerfinance.gov/f/201604_cfpb_list-of-consumer-reporting-companies.pdf (last viewed January 26, 2018).

¹¹ See fn. 10 at pg. 8.

¹² 15 U.S.C. s. 1681 *et seq.*

¹³ 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>.

Experian, TransUnion, etc.) that collect and compile consumer information into consumer reports, which are often referred to as credit reports.¹⁴

In 2003, the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) amended the FCRA, which added a number of provisions to help consumers and businesses combat identity theft and mitigate the damage when identity theft occurs, and establish a national fraud alert system.¹⁵ The FCRA, as amended by the FACT Act, allows a consumer or the consumer's representative to assert a good-faith suspicion to a consumer reporting agency that he or she has been or is about to become the victim of identity theft.¹⁶ 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.¹⁷ A consumer or the consumer's representative can also file for an extended fraud alert that lasts up to 7 years if an identity theft report is submitted to the consumer reporting agency.¹⁸ However, fraud alerts do not prevent a potential creditor from obtaining the consumer report and may not prevent the opening of new credit accounts.¹⁹

Florida Statutes Relating to Consumer Report Security Freezes

2006 Florida Law

In response to concerns regarding identity theft, Florida and the majority of states have adopted laws that allow a consumer to freeze access to his or her consumer report and prevent anyone from trying to open a new account or new credit. In 2006, legislation was enacted in Florida.²⁰ In Florida, a consumer can place a security freeze on his or her consumer report by sending a written request by certified mail to a consumer reporting agency.²¹ With some exceptions, the security freeze prohibits the consumer reporting agency from releasing the consumer report, credit score, or any information contained within the consumer report to a third party without the express authorization of the consumer.²² Additionally, while a security freeze is in effect, a consumer-reporting agency may not change a consumer's name, address, date of birth, or social security number in a consumer report without sending the consumer written confirmation of the change.²³

¹⁴ *Id.*

¹⁵ P.L. 108-159, H.R. 2622, 108th Cong. (Dec. 4, 2003), available at <https://www.gpo.gov/fdsys/pkg/STATUTE-117/pdf/STATUTE-117-Pg1952.pdf>. (last visited January 24, 2018).

¹⁶ 15 U.S.C. s. 1681c-1(a)(1).

¹⁷ *Id.*

¹⁸ 15 U.S.C. s. 1681c-1(b).

¹⁹ 15 U.S.C. ss. 1681c-1 and 1681m(e).

²⁰ Ch. 2006-124, Laws of Fla.

²¹ Section 501.005(2), F.S.

²² Section 501.005(1), (12), and (15), F.S. Subsection 501.005(12), F.S., allows for the release of information otherwise protected by a security freeze to the existing creditors of the consumer, 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 persons. Subsection 501.005(15), F.S., allows for the release of information otherwise protected by a security freeze to a check services company, a deposit account information service company, a consumer reporting agency that acts only as a reseller of credit information, and a fraud prevention services company.

²³ Section 501.005(14), F.S.

A consumer reporting agency must place a security freeze within 5 business days after receiving a request and must provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the removal of a security freeze.²⁴ A consumer reporting agency may charge a fee up to \$10 when a consumer elects to place, temporarily lift, or remove a security freeze or when the consumer reporting agency reissues a lost personal identification number or password.²⁵ However, the law prohibits a consumer reporting agency from charging a fee to a consumer 65 years or older for the placement or removal of a security freeze and prohibits a consumer reporting agency from charging any fee to a victim of identity theft.²⁶

2014 Keeping I.D. Safe (KIDS) Act

The 2006 law did not contain a mechanism for freezing the credit for individuals who do not have an existing credit report. Therefore, in 2014, the Keeping I.D. Safe (KIDS) Act became law in Florida, and Florida law now contains a process by which a security freeze may be placed on a record created to identify a protected consumer (i.e., a person younger than 16 years of age or a person represented by a guardian or other advocate).²⁷ To place the security freeze, a representative of the protected consumer must submit a request to the consumer reporting agency and provide sufficient proof of authority and identification.²⁸ With some exceptions, the security freeze prohibits the consumer reporting agency from releasing the protected consumer's record.²⁹ Additionally, while a security freeze is in effect, a consumer reporting agency must send the protected consumer's representative written confirmation of a change to the protected consumer's name, address, date of birth, or social security number.³⁰

A consumer reporting agency must place a security freeze within 30 days after confirming the authenticity of a security freeze request and must provide the protected consumer's representative with a unique personal identifier to be used by the protected consumer's representative when providing authorization for the removal of a security freeze.³¹ A consumer reporting agency may charge a fee up to \$10 when a security freeze is placed or removed or when the consumer reporting agency reissues a lost unique personal identifier.³² However, the law prohibits a consumer reporting agency from charging a fee to the representative of a protected consumer who is a victim of identity theft.³³

Regardless of whether a security freeze is requested on an existing consumer report or on a record created to identify a protected consumer, the request for a security freeze must be made to each consumer reporting agency. For example, when a request to place a security freeze is made to three consumer reporting agencies, the consumer or protected consumer's representative

²⁴ Section 501.005(3), (4), F.S.

²⁵ Section 501.005(13)(a), (c), F.S.

²⁶ Section 501.005(13)(b), F.S.

²⁷ Ch. 2014-66, Laws of Fla.; s. 501.0051, F.S.

²⁸ Section 501.0051(2), F.S.

²⁹ Section 501.0051(1)(f)2., (8), F.S. Subsection 501.0051(8), F.S., allows for the release of information otherwise protected by a security freeze to persons and entities similar to those listed in s. 501.005(12) and (15), F.S.

³⁰ Section 501.0051(10), F.S.

³¹ Section 501.0051(4), (5), F.S.

³² Section 501.0051(9)(a) and (b), F.S.

³³ Section 501.0051(9)(c), F.S.

would be charged up to \$10 by each, for a total of up to \$30.³⁴ Additionally, the consumer or protected consumer's representative incurs fees of up to \$10 by each consumer reporting agency when there is a need to temporarily lift a security freeze, remove a security freeze, or replace a lost unique personal identifier.

State Survey of Laws Relating to Consumer Report Security Freezes

Most states allow fees for placing a security freeze, and fees generally range from \$2 to \$10.³⁵ Among the states that do not allow fees for placing a security freeze, the majority allow some combination of fees for temporarily lifting a security freeze, removing a security freeze, or creating a record to identify a protected consumer who does not have an existing consumer report. Indiana and South Carolina prohibit all fees for placing, temporarily lifting, or removing security freezes on an existing consumer report and prohibit fees associated with creating a record to identify a protected consumer.³⁶

III. Effect of Proposed Changes:

Section 1 amends s. 501.005, F.S., to prohibit consumer reporting agencies from charging consumer fees who elect to place, remove, or temporarily lift a security freeze on a consumer report. The consumer reporting agency may charge a reasonable fee, not to exceed \$10, if the consumer fails to retain the original personal identification number or password provided by the consumer reporting agency.

Section 2 amends s. 501.0051, F.S., to similarly prohibit such fees when a representative places, removes, or temporarily lifts a security freeze on a protected consumer's consumer report.

Section 3 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³⁴ However, Equifax is waiving its fees for placing, temporarily lifting, or removing a security freeze through January 31, 2018. EQUIFAX, *Place, Temporarily Lift or Permanently Remove a Security Freeze*, https://www.freeze.equifax.com/Freeze/jsp/SFF_PersonalIDInfo.jsp (last visited January 24, 2018).

³⁵ EQUIFAX, *What are the security freeze fees in my state?*, <https://help.equifax.com/s/article/What-are-the-security-freeze-fees-in-my-state> (last visited Jan. 4, 2018); EXPERIAN, *Security Freeze*, <https://www.experian.com/blogs/ask-experian/credit-education/preventing-fraud/security-freeze/> (last visited Jan. 4, 2018); TRANSUNION, *Credit Freeze Information by State*, <https://www.transunion.com/credit-freeze/credit-freeze-information-by-state> (last visited Jan. 4, 2018).

³⁶ *Id.*

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

None.

B. Private Sector Impact:

The elimination of the security freeze fees could potentially increase the utilization of security freezes and reduce identity theft. Consumers and their representatives will no longer pay fees of up to \$10 related to placing, removing, or temporarily lifting a security freeze on a consumer report.

Consumer reporting agencies will no longer collect such fees.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 501.005 and 501.0051.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.