

Date of Hearing: April 28, 2014

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Roger Dickinson, Chair

AB 1658 (Jones-Sawyer) – As Amended: March 17, 2014

SUBJECT: Foster care: consumer credit reports: security freeze.

SUMMARY: Specifies the process for placement of a credit freeze for a child in foster care. Specifically, this bill:

- 1) Requires that upon entry into foster care of a child under 16 years of age, or for a child in foster care placement on their 16<sup>th</sup> birthday, a county welfare agency (CWA) or county probation department (CPD) shall do all of the following:
  - a) Notify each of the three major credit reporting agencies (CRAs) that the child is in foster care;
  - b) Discover whether the child has an active consumer credit report; and,
  - c) In the case of a child that does have a report, immediately request that the CRAs place a freeze on the child's report and work with the Department of Justice's Enforcement and Protection Unit to resolve any credit irregularities or negative actions that have been discovered on the credit report.
- 2) Provides that following notification from a CWA or CPD of the placement of a child into foster care, the CRA shall do the following:
  - a) Notify the CWA or CPD of whether the child placed in foster care has an active consumer credit record;
  - b) If the child is found to have a report, place a security freeze on the child's credit report; and,
  - c) If the child is found not to have an active consumer credit report, preclude the child's information from being used to create a credit account in his or her name.
- 3) Specifies that no later than July 1, 2015, the Department of Social Services (DSS) shall, in consultation with the Administrative Office of the Courts, the Department of Justice's Privacy Enforcement and Protection Unit, the California Welfare Directors Association, the County Probation Officers of California, youth-based organizations made up of current and former foster children, and consumer, privacy, and foster children advocacy organizations, issue instructions to counties via an all-county letter or similar instruction to do all of the following:
  - a) Provide the circumstances under which a security freeze of a foster child's credit report is lifted, including when the child exits, emancipates, or runs away from foster care, and by whom the freeze can be lifted;

- b) Provide instructions as to how a CWD or CPD shall notify the three major credit reporting agencies that a foster child can reacquire the ability to develop credit; and,
- c) Identify required processes and best practices in the identification and resolution of credit irregularities or negative actions on a foster child's credit report, including, but not limited to, entering the information into the foster child's case plan and notification of the juvenile court, child's counsel, and other adults responsible for the child's care, as necessary.

#### EXISTING LAW

- 1) Requires a CWA to request a consumer credit report from each of the three major CRAs on behalf of each youth who is under the jurisdiction of the juvenile court on his or her 16th birthday. (Welfare & Institutions Code (WIC) Section 10618.6(a))
- 2) Requires a CWA or CPD to assist any nonminor dependent (NMD) with requesting a consumer credit report from each of the three major CRAs. (WIC Section 10618.6(b))
- 3) Requires county social workers and county probation officers to ensure that minors in foster care and NMDs receive assistance with interpreting their credit report and addressing any inaccuracies with the report. (WIC Section 10618.6(c))
- 4) Exempts social workers and probation officers from providing direct assistance with interpreting or resolving inaccuracies of a minor in foster care or NMD's consumer credit report. (WIC Section 10618.6(c))
- 5) Authorizes CWAs, CPDs and the DSS to release necessary information to CRAs for the purposes of requesting a consumer credit report on behalf of minors in foster care. (WIC Section 10618.6(d))
- 6) Regulates consumer CRAs via the Consumer Credit Reporting Agencies Act. (Civil Code, Section 1785.1 et seq. All further references are to the Civil Code).
- 7) Defines consumer credit report as any written, oral, or other communication of any information by a consumer CRA bearing on a consumer's credit worthiness, credit standing, or credit capacity, which is used or is expected to be used, or collected in whole or in part, for the purpose of serving as a factor in establishing the consumer's eligibility for: (1) credit to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) hiring of a dwelling unit, as defined in subdivision (c) of Section 1940, or (4) other purposes authorized in Section 1785.11. (Section 1785.3).
- 8) Requires that every CRA shall, upon request and proper identification of any consumer, allow the consumer to visually inspect all files maintained regarding that consumer at the time of the request. (Section 1785.10)
- 9) Specifies the circumstances under which a CRA shall furnish a consumer credit report. (Section 1785.11)

- 10) Requires a user of a consumer credit report to provide written notice of an adverse action to the consumer. (Section 1785.20).

FISCAL EFFECT: Unknown

COMMENTS:

According to information provided by the author's office the bill is needed for the following reasons:

*Identity theft is a perennial crime that has taken on new dimensions in the Information Age. Children's personal information, such as a Social Security number, is valued by identity thieves because there is typically no credit file associated with the data. This means that thieves can pair the information with any name and date of birth to create a false identity, using it to purchase homes and automobiles, open credit card accounts and obtain driver's licenses. The damage can go undiscovered for years.*

*The potential impact of identity theft on a child's future is profound. It can destroy or severely damage a child's ability to get approval for student loans, acquire a mobile phone, obtain a job or secure a place to live.*

*Foster children may be at a higher risk of falling victim to identity theft than other children. They suffer the added vulnerability of having their personal information pass through the hands of many people as they are moved around in the foster care system. Without a family safety net to help them through the laborious process of clearing up their credit records, the repercussions can hinder their changes of a successful entry into adult life.*

As noted in the statement above this bill is designed to prevent, and if necessary mitigate the impact of identity theft of children in the foster care system. AB 1658 would attempt to prevent the identity theft of minors in the foster care system by requiring that CWA, or CPD find out if a minor has a credit record and if so place a freeze on that record. If the child does not have a record they would request from the CRAs that they prevent any credit record from being opened for the child, thereby preventing any authorizations of new credit.

A 2012 Child Identity Fraud Survey, conducted by Javelin Strategy & Research revealed the following concerning child identity theft:

- 1) Social Security numbers (SSN) are the most commonly used piece of information by identity thieves targeting children. In fact, 56% of respondents reported theft or misuse of a child's SSN.
- 2) The most common way criminals use a child's personal information is to combine a child's SSN with a different date of birth to create a new identity that can be used to commit fraud. Fraud involving "synthetic identity" is especially difficult for victims and industry to detect.
- 3) The study found that 2.5% of U.S. households with children under age 18 experienced child identity fraud at some point during their child's lifetime. This equates to one in 40

households with minor children being affected by this crime.

- 4) Fraud committed by family and friends is to blame in many child ID theft cases. The data shows that 27% of respondents reported knowing the individual responsible for the crime.
- 5) Low-income households are disproportionately affected by child identity theft. As family income decreases, the risk of child identity fraud increases. While 50% of households of child identity theft victims had incomes under \$35,000, only 10% of households of child identity theft victims had incomes of more than \$100,000.
- 6) Child identity theft is more difficult to detect and resolve than adult identity theft. The survey showed that these crimes took 334 days to detect and 44 hours to resolve, and 17% of children were victimized for a year or longer.

A 2011 study conducted by Carnegie Mellon University, *Child Identity Theft: New Evidence Indicates Identity Thieves are Targeting Children for Unused Social Security Numbers*, found that children are far more likely to be targeted for identity theft for their unused SSN. Specifically, the report found that of 42,232 children polled, over 10%, or 4,311 of them, were found to have had their identity stolen. When compared to the rate of identity theft among adults, children in this study were 51% more likely to experience identity theft. Further exacerbating this finding is the fact that parents and children often do not find out the youth is a victim of identity theft until he or she applies for a job, opens a financial account, or is notified by law enforcement that his or her personal information has been stolen.

However, children in foster care who rely upon the state's CWS to provide for their health and safety are at an even greater risk than their peers to become victims of identity theft. In 2011, the California Office of Privacy Protection (COPP), now known as the Department of Justice's Privacy Enforcement and Protection Unit, released a report of a year-long pilot project in Los Angeles County. The pilot project conducted credit checks on 2,110 foster youth between the ages of 16 and 17 years of age. It was discovered that 104 children were found to have had 247 financial accounts of varying types; credit cards, bank accounts, utility accounts, cellular phone and cable contracts, etc., opened in their name. Several children were found to have auto loans and one was identified as having a \$217,000 mortgage listed in the child's name. Fortunately, the project also worked to resolve all 247 accounts and cleared the credit of all 104 children who participated in the pilot. The pilot program found that four percent of the children were possible victims of identity theft, but even that cannot be a firm determination because some of the potentially fraudulent accounts could have resulted from error, not fraud.

### Concerns.

The final conclusions from the pilot project are demonstrative of the potential problems associated with AB 1658. The CRAs reported that the transmission process provided for in the pilot project could not be replicated for all counties individually. COPP also expressed reservations as to the security risks involving so many entities in transmitting sensitive data. Conversely, county agencies sending individual written request to the CRAs would be very labor intensive versus an electronic process that could handle bulk requests. The pilot project concluded that a potential alternative to the county-by-county process would be to centralize the transmission of requests for credit reports at the state level with DSS. Another option recommended was that since half the foster children in the state are in Los Angeles County then

the county continue to perform the task under the pilot and the other 57 counties would submit data to the state. AB 1658 takes an alternative approach by requiring a manual process for all counties in California. The bill specifies that the county social worker or probation officer shall make various inquiries, and requests with the CRAs concerning the credit reports of foster children. It also requires that by July 1, 2015 that DSS, in consultation with other state entities, issue instructions to the counties on how to organize this process. It is unclear, even with this directive, whether that process will avoid a different process for 58 counties. Even if the process is uniform, this does increase the transmission of sensitive data across multiple entities.

The requirement placed upon the CRAs to provide the credit report, or place a credit freeze is unclear as to how CWAs should provide “notification” to the CRA regarding a child in foster care and how the CRA should “notify” the county welfare office if they find an active consumer credit report. Furthermore, the placement of a security freeze typically involves a fee. California law, Civil Code, Section 1785.11.2 caps this fee at \$10 per CRA so in order to place a freeze with all three CRAs it would be \$30 per child. It is unclear who would pay this fee. AB 1658 also does not provide a process for how a freeze would be lifted once the child becomes an adult.

The problem of child identity theft may impact foster children at a higher rate, but it makes the overall problem no less of a concern. Several other states (Delaware, Illinois, Maryland, Michigan, Oregon, Texas and Wisconsin) have passed laws providing a process for parents and guardians to request a credit freeze, or create a protected credit file for minor children. The protected credit file is created for the child without a credit report by establishing a file with details of the minor that would prevent the opening of any credit accounts. These statutory processes are detailed as to the interaction and responsibilities of consumers and the CRAs. They typically also address the amount of fees that may be charged. AB 1658 requires certain actions on the part of CWA and CRAs concerning foster child credit reports but does not specify any of the process details. As mentioned previously, AB 1658 requires that the DSS issue a letter to CWAs that would outline the process details; however this letter would not create a specific process for the CRAs to follow as has been done in other states.

Staff acknowledges the need to protect minors from identity theft, yet the problems previously outlined with the current approach in AB 1658 may create more questions than answers. If it is deemed necessary to move this bill along to allow further work on this issue, then the following suggestions may serve as guidance for future changes:

- 1) The author may want to consider the formation of a working group made up of the CRAs, county welfare directors, DSS, the Attorney General's office and others to coordinate how the credit freeze process should work for foster children.
- 2) Responsibility for the fees associated with a credit freeze should be clarified.
- 3) The author may want to consider establishing a process for all minors to protect their credit as several other states have done.
- 4) Rather than require the issuance of a letter to specify the details and instructions on the process, it may be more appropriate to put the process in statute if a working group can come up with a uniform process.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State County and Municipal Employees (AFSCME)  
California Reinvestment Coalition  
City of Los Angeles  
Common Sense Media  
National Association of Social Workers, CA Chapter (NASW-CA)  
Symantec Corporation  
The Family Online Safety Institute (FOIS)  
Western Center on Law and Poverty  
1 Individual

Opposition

None on file.

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