

Date of Hearing: April 16, 2012

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Mike Eng, Chair
AB 2374 (Hernandez) – As Amended: March 29, 2012

SUBJECT: Consumer credit reports: security freezes.

SUMMARY: Prohibits a consumer credit reporting agency from charging any fee upon a consumer 65 years of age or older for placing, lifting, or removing security freezes.

EXISTING FEDERAL LAW

- 1) Requires every credit reporting agency to disclose to a consumer, upon request, specific information related to that consumers credit report, as well as, directions on how to contest information contained within the report. [Fair Credit Reporting Act US Code, Title 15, 1681et seq.]

EXISTING STATE LAW

- 1) Establishes the California Office of Privacy Protection in 2001, which provides individuals and businesses with information and assistance on ever evolving privacy topics such as identity theft, online child safety, financial privacy, cyber security and mobile device privacy. The role of this office is to receive complaints from individuals concerning a person obtaining, compiling, maintaining, using, disclosing, or disposing of personal information in a manner that may be potentially unlawful or violate a stated privacy policy relating to that individual, and provide advice, information, and referral, where available. The office also needs to provide information to consumers on effective ways of handling complaints that involve violations of privacy-related laws, including identity theft and identity fraud. If appropriate local, state, or federal agencies are available to assist consumers with those complaints, the office shall refer those complaints to those agencies. [Government Code, Section 11549.5-11549.10]
- 2) Allows a consumer reporting agency (CRA) to charge a consumer who is 65 years of age or older and who has provided identification confirming his or her age a fee not to exceed \$5 for placement of each freeze, the removal of the freeze, the temporary list of the freeze for a period of time, or the temporary lift of the freeze for a specific party. [Civil Code, Section 1785.11.2 (m)]
- 3) Allows a consumer to place a security freeze on his or her credit report by making a written request by mail to a consumer CRA. [Civil Code, Section 1785.11.2(a)]
- 4) Defines "security freeze" as a notice placed in a consumer's credit report at the consumer's request and, subject to certain exceptions, prohibits the credit reporting agency from releasing the credit report or any information from it without the consumer's express authorization. [Civil Code, Section 1785.11.2.]
- 5) Requires the CRA to place a security freeze on the consumer's credit report no later than three days after receiving a request, and within 10 business days must send the consumer

written confirmation of the freeze along with a unique personal identification or password to be used by the consumer when authorizing the release of his or her credit for a specific party or period of time. [Civil Code, Section 1785.11.2(b) (c).]

- 6) Allows a consumer to request a temporary lift of a security freeze, if certain conditions are met. A CRA that receives a request for a temporary lift of a security freeze is required to do so within three business days of receiving the request. [Civil Code, Section 1785.11.2(d) (e) (g).]
- 7) Provides that a CRA may develop procedures involving the use of telephone, fax, the internet, or other electronic media to receive and process a consumer request to temporarily lift a security freeze in an expedited manner. [Civil Code, Section 1785.11.2(f).]
- 8) Requires that, if a consumer requests a security freeze, the CRA must inform the consumer of the process for placing and temporarily lifting a freeze, and the process for allowing access to information from the consumer's credit report for a specific party or period of time while a freeze is in place. [Civil Code, Section 1785.11.2(i).]
- 9) Allows, except as specified, a CRA to charge a fee of no more than \$10 to a consumer for each freeze, removal of the freeze, or temporary lift of the freeze for a period of time. [Civil Code, Section 1785.11.2(m).]
- 10) Prohibits a fee from being charged to place a security freeze for a victim of identity theft who presents a valid police report or valid DMV investigative report [Civil Code, Section 1785.11.2(m)].
- 11) Requires that whenever a CRA provide a written disclosure to a consumer that it must also include a notice to a consumer of their rights to receive and correct errors on their credit report, as well as, information on placing a security freeze and credit alert on their credit file. [Civil Code, Section 1785.15].

FISCAL EFFECT: None.

COMMENTS:

The following states do not charge fees for security freezes to those 65 or older: Illinois, Georgia, Florida, Indiana, Louisiana, North Carolina, New Mexico, Oklahoma, Pennsylvania, Washington, South Carolina, and Rhode Island.

Other states have fees ranging from \$3 to \$20 to place security freezes. Currently, California charges those 65 or older a fee of \$5 to place, lift or remove a security freeze. All others are charged a fee of \$10.

In California, consumers have the right to put a "security freeze" on their credit file which can help prevent identity theft. A security freeze means that the consumer's file cannot be shared with potential creditors. Most businesses will not open credit accounts without first checking a consumer's credit history. If credit files are frozen, even someone who has the consumer's name and Social Security number would most likely not be able to get credit in the consumer's name.

Current law provides that a security freeze is free to identity theft victims who have a police report of identity theft. For those not an identity theft victim and under 65 years of age, it will cost \$10 to place a freeze with each of the three credit bureaus. That's a total of \$30 to freeze files. For those not an identity theft victim and 65 years of age or older, it will cost \$5 to place a freeze with each of the three credit bureaus. That's a total of \$15 to freeze files.

Security freezes are designed to prevent a CRA from releasing a credit report without the consumer's consent. Using a security freeze to take control over who is allowed access to the personal and financial information in a file may delay, interfere with or prohibit the timely approval of any subsequent request or application the consumer makes regarding a new loan, credit, mortgage, insurance, government services or payments, rental housing, employment, investment, license, cellular telephone, utilities, digital signature, Internet credit card transaction or other services, including an extension of credit at point of sale.

When a consumer places a security freeze on their file, they will be provided a personal identification number or password to use if the consumer chooses to remove the security freeze from their file or authorize the temporary release of their credit report for a specific person or period after the security freeze is in place. To provide that authorization, the consumer must contact the CRA and provide all the following: Sufficient identification to verify identity, personal identification number or password provided by the CRA, a statement that the consumer chooses to remove the security freeze from their file or that the consumer authorizes the CRA to temporarily release the consumer report.

BACKGROUND:

In 2008, the Assembly Banking and Finance Committee analyzed AB 372 (Salas). The January 7, 2008 version of the bill provided that no one 65 or older could be charged a fee for placing, lifting or removing a security freeze. In regards to this fee, the analysis stated:

"A major point of contention between the author of this bill and opposition is the reduction and in one case elimination of the fees associated with placing a security freeze. This bill eliminates the fee for anyone 65 and older to place a freeze, or a consumer who is placing a freeze for the first time. Additionally, the fee for placing or lifting the freeze is reduced by this bill to \$5. The author and supporters contend that the current fee is an obstacle for consumers to use this vital service, while the opposition argues that the fees are reasonable and necessary to maintain the credit freeze system.

It is unclear that the current cost of placing a freeze is prohibiting consumers away from this option. The author's office has provided the committee with information regarding other states that have eliminated their fees or reduced them. However, the committee does not have information on the number of security freeze requests in those states versus California. For example, does California have more requests for this service that makes it more costly for CRAs? The bulk of the data available points out a total lack of awareness on the part of consumers that this service exists to protect their credit data. On the other hand, relative little is available that reveals the real cost to credit reporting agencies for maintaining the credit freeze system."

The compromise between the Committee, Author, and opposition was to place a fee of \$5 to those 65 and older who wish to place, remove or lift a security freeze rather than eliminate the fee or leave it at \$10.

While a number of states do not charge any fee for those 65 and older to place, remove or lift a security freeze, the statistics below do not show that those actually 65 and older are in the most danger of identity theft. As discussed below, several sources found that the age group between 20-34 was most in danger of identity theft.

IDENTITY THEFT:

Identity theft is taking someone else's personal information and using it for an unlawful purpose. According to a report called the "2011 Identity Fraud Survey Report" by Javelin Strategy and Research, "there were 8.1 million U.S. adults who were victims of identity theft in 2010. That represents 3.5% of adults, including about a million Californians. The total cost of identity theft in 2010 was \$37 billion. The average victim spent \$631 and 33 hours to resolve the problem and clear up records. Victims come in all ages. In 2010, the 25-34 year old group experienced the highest rate of identity theft and spent the most to clear it up, averaging \$1,471. Those over 65 years old had the lowest rate and spent the least, \$137."

Identity thieves do many things in a victim's name, from using a credit card account to opening new accounts, taking out an auto loan, getting medical services, or even committing a crime and creating a criminal record.

According to the Consumer Sentinel Network, the largest number of identity theft complaints in 2011, in the United States, came from the ages 20-29 with 23%. The two ages with the least amount of fraud complaints came from those 19 and younger with 8% and 70 and over with 6%. In 2011, California ranked 3rd behind Florida and Georgia, for the amount of identity theft complaints received from consumers. California received 38, 607 identity theft complaints in 2011.

NEED FOR THE BILL:

According to the Author, identity thieves target seniors as they are much less likely to monitor their credit files and are also less likely to detect if a fraudulent account has been opened in their name. This is because seniors do not typically open new credit accounts and therefore have little need to check their credit reports.

PREVIOUS LEGISLATION:

AB 372 ((Salas) Chapter 151, Statutes of 2008) This bill amended the Consumer Credit Reporting Agencies Act to provide that a consumer credit reporting agency may, except as specified, charge a fee of no more than \$5 to a consumer 65 years of age or older and no more than \$10 to other consumers for each security freeze request, removal of the freeze, temporary lift of the freeze for a period of time, or temporary lift of a freeze for a specific party; required a consumer credit reporting agency to place a security freeze on a consumer's credit report no later than three business days after receiving a request; allows a consumer to place a security freeze on his or her credit report by making a written request by regular mail to a consumer credit reporting agency. Earlier versions of this measure eliminated the fee to those over the age of 65.

REGISTERED SUPPORT / OPPOSITION:

Support

Consumers Union

Opposition

Equifax, Inc.
TransUnion LLC

Analysis Prepared by: Kathleen O'Malley / B. & F. / (916) 319-3081