Date of Hearing: April 15, 2024

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Timothy Grayson, Chair
AB 2935 (Maienschein) – As Amended April 1, 2024

SUBJECT: Foster children: consumer credit reports

SUMMARY: Requires a credit reporting agency (CRA) to block and stop reporting information on a foster youth's credit report if such information is shown to exist following a specified inquiry, and requires a CRA to automatically lift a security freeze when a foster youth turns 18.

Specifically, **this bill**:

1) Deems specified requirements for a protected consumer's representative, as a condition to them requesting a security freeze, to have been met if the request is verifiability from a county welfare department, a county probation department, or the State Department of Social Services (DSS).

2) Requires a credit reporting agency, in the event that any information appears on foster youth's credit report following an inquiry from a county welfare department, county probation department or DSS, to promptly block and not report that information in the same manner as if the agency had received a police report.

3) Requires a credit reporting agency to comply with existing provisions governing their duties to notify data furnishers and consumers about certain blocked and unblocked information and investigate and reinvestigate disputed information.

4) Requires a security freeze placed on behalf of a foster youth to automatically expire on their 18th birthday unless they, either directly or through their representative, instructs the credit reporting agency to maintain the freeze beyond that date.

5) Authorizes a freeze to be removed upon the request of a foster youth's representative after their 16th birthday.

EXISTING LAW:

State Law

1) Establishes the Consumer Credit Reporting Agencies Act (the Act). The Act defines "consumer credit report" as any written, oral, or other communication of any information by a consumer credit reporting agency 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 specified purpose. (Civil Code Section 1785.3.)

2) Requires a CRA to place a security freeze for a protected consumer under specified conditions. (Section1785.11.11.)

Federal Law

1) Provides for the Fair Credit Reporting Act (FCRA) .which regulates the collection, dissemination, and use of consumer credit information. (15 U.S.C. Section 1681 et seq.)

2) Requires a consumer reporting agency to block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft.

3) States that no requirement or prohibition may be imposed under the laws of any state with respect to any subject matter regulated under specified FCRA provisions, including subsections (i) and (j) of section 1681c–1 of this title relating to security freezes. (15 U.S.C. Section 1681t(b)).

FISCAL EFFECT: Unknown. This bill is keyed Nonfiscal by Legislative Counsel.

COMMENTS:

1) **Purpose.**

   According to the author:

   > Foster youth are especially vulnerable to having their identities stolen due to the large number of people who have access to their personal information. Each time a foster child changes placements, additional individuals gain access to their information, including their social security number. It is estimated that at least fifteen percent of foster youth become the victims of identity theft. Children have always been an attractive target for identity thieves because their credit reports are clean and are often left unmonitored for many years, providing ample time to cause substantial damage to the child’s credit. Once a foster youth reaches 14, or if they come into the system after the age of 14, current law requires county welfare departments to check with the three credit bureaus to see if a credit report exists. Because children should not have credit reports, the existence of a report is likely the result of fraud. If a report does exist, social workers must provide foster youth with information and assistance to fix credit inaccuracies. However, our current laws only come into play after a youth has been victimized. AB 2935 seeks to prevent identity theft in the first place by requiring the credit bureaus to automatically freeze an individual’s credit reports when they receive an inquiry from a county welfare department regarding a foster youth. Placing the automatic freeze will prevent nefarious actors from being able to open accounts in a child’s name.

2) **Background: security freezes.**

   Under both federal and state law, California consumers have the right to put a "security freeze" on their credit file to help prevent identity theft. A security freeze means that the consumer's file cannot be shared with potential creditors, and 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.

Security freezes are designed to prevent a credit reporting agency from releasing a credit report without the consumer's consent. Using a security freeze to take control over who is allowed access to the information in a file may delay or prohibit the timely approval of any subsequent request or application the consumer makes regarding a new loan, credit, mortgage, or other services, including an extension of credit at point of sale. Thus, while security freezes help prevent identify theft, they can also complicate legitimate efforts to obtain credit.

Importantly, a security freeze cannot be placed on a credit file unless a credit file has been created. Therefore, if a security freeze is requested for someone who does not have any credit history, then the CRA must create the file in order to place the freeze.

3) **Background: foster youth and identify theft.**

Identity theft can take on different forms but is generally defined as a fraud that is committed using a person's identity information without that person's authority. Some of the most common types of identity theft include using someone else's information to claim a tax refund, obtaining credit, obtain medical care using someone else's health insurance, or using someone else's information to claim government benefits.

Identity theft can have a severe and long-lasting repercussions for victims. FTC's *Identity Theft: Aftermath* survey shows the extent to which victims endure significant and long-term fiscal, financial, and emotional harm as a result of identity theft.[1] Victims often cannot obtain housing, employment, or medical service, and they report ongoing issues with stress and emotional health. Moreover, it can be tremendously frustrating for victims to resolve identity theft issues with government agencies and other institutions.

Unfortunately, identity theft is also common for children and especially foster youth. In these cases, someone uses a minor child's personal information, such as name and Social Security number, usually to obtain credit or employment. Identity thieves may target children because the crime can go undetected for years, often until the child applies for his or her first loan or credit card.

Foster youth are uniquely vulnerable to identity theft because their personal information can be accessed by a range of adults they interact with, including noncustodial family members, social services personnel, and foster parents. A 2011 study by the then-called California Office of Privacy Protection evaluating a Los Angeles pilot program was instrumental in furthering California policymakers' understanding of the extent of the problem facing foster youth. 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.

4) **Policy efforts to combat foster youth identify theft.**

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[1] https://www.idtheftcenter.org/identity-theft-aftermath-study/

The privacy and identity theft challenges facing foster youth have been known for nearly two decades, and a number of state and federal legislative laws established new processes to better protect foster youth, their credit, and their ability to be financially independent once they age out of the foster system. The trajectory of these legislative efforts have been to ramp up obligations on CRAs, states, and the foster youth's representatives to take increasingly more proactive steps to intervene on child's behalf.

State Legislation

California first enacted legislation related to credit reports and foster youth in 2006. AB 2985 (Maze), Chapter 387, Statutes of 2006, required a county welfare department to request a consumer credit disclosure for a foster youth turning 16 and to foster that youth to a credit counseling organization if there were negative items or evidence of foster youth. AB 2985's success was helped by new information gathered by the Assembly Select Committee on Foster Care that brought to light the widespread challenge of identity theft in the foster care system.

In 2012, the Legislature passed SB 1521 (Liu), Chapter 847, Statutes of 2012, which among other provisions required county welfare agencies to annually request a free consumer credit report when they turn 16 and for each year thereafter, therefore bringing California into compliance with new federal rules. Then, AB 1658 (Jones-Sawyer), Chapter 762, Statutes of 2014, was passed to require better coordination across county departments and the DSS. Senate Bill 794 (Committee on Human Services), Chapter 425, Statutes of 2015, lowered the age at which an inquiry must be submitted about a dependent child's credit history to the age of 14 from 16.

The Legislature also passed legislation imposing new requirements on CRAs related to security freeze requests for foster youth. Specifically, AB 1580 (Gatto), Chapter 494, Statutes of 2016, amended the Consumer Credit Reporting Agencies Act to require a CRA to place a security freeze for a protected consumer (such as a foster youth) under 16 years of age after a request from the child's representative.

Federal Legislation

Federal legislation has imposed additional requirements on states and CRAs. In 2011, Congress passed the Child and Family Services Improvement and Innovation Act which, among other things, required states to more proactively intervene on behalf of foster youth. Under the law, a state must run a credit check on foster youth of a certain age and help resolve cases before they leave the foster care system. Subsequently, the Preventing Sex Trafficking and Strengthening Families Act further modified these requirements.

Despite the above-mentioned two federal laws that require states to take certain steps to protect foster youth's credit, there remain indications that problems persist. In September 2022, the US Department Health and Human Services' Office of the Inspector General announced it as reviewing states' compliance with the federal rules requiring states to request an annual credit check for children aged 14 or older and help address inaccuracies. As the HHS website notes, "The surge in reports of identity theft and stakeholder concerns could indicate that credit checks and the resolution of credit reports may not be occurring as required by Federal law.[2]" That report is due sometime in 2024.

Like in California, Congress has also passed new rules for the CRAs. In 2018, The Economic Growth, Regulatory Relief, and Consumer Protection Act amended the Fair Credit Reporting Act (FCRA) to among other things, require CRAs to provide a security freeze free of charge. As part of these new rules, a parent or child welfare representative of people under the age of 16 can request a security freeze on their behalf. And, a welfare or probation agency representatives acting on behalf of a young person in foster care can request a security freeze for that child. They have to show documentation certifying that the child is in the agency's care, such as a written communication or an official letter from the child welfare or probation agency or its designee. This law also included a number of provisions related to federal preemption of state laws applying to CRAs, which are discussed in **Comment #5.**

5) **Federal preemption considerations.**

As noted above, the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act amended FCRA to create new requirements on CRAs regarding their obligations to foster youth. Simultaneously, the Act constrained states' ability to legislate on certain topics covered by the federal law. Specifically, FCRA now preempts specific categories of state laws, while those that are not "inconsistent" with FCRA generally are not preempted.

A 2022 interpretive rule issued by the Consumer Financial Protection Bureau delineate what is preempted by FCRA and what is not. While the CFPB guidance clearly authorizes states to pursue legislation on certain topics, such as the inclusion of information in credit reports, other areas remain less clear, leading stakeholders to continue debating the scope of FCRA's preemption.

CRAs argue that most state laws regarding "security freezes" are now preempted by FCRA. The CFBP notes in its guidance that "FCRA also expressly preempts certain categories of state laws," including state laws with respect to specified subject areas, such as security freezes. Moreover, legal practitioners in other states have determined that their own laws related to security freezes are now preempted by FCRA. In a post by Eva Lorenz and Suzanne Begnoche of the North Carolina Bar Association argue that FCRA's security freeze provisions preempt North Carolina's security freeze law.[3]

However, the author's office and the Children's Advocacy Institute (CAI), the sponsor of AB 2935, disagree with this analysis. They contend that, using the same logic in the CFPB's analysis, the provisions in AB 2935 are not inconsistent with FCRA and therefore not preempted. For example, since FCRA does not include a provision governing the "automatic" removal of a security freeze for foster youth by a certain date, it is not a subject matter regulated by FCRA.

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[2] "Protecting Children in Foster Care From Identity Theft,' The US Department of Health and Human Services Office of Inspector General, available at: https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000730.asp
[3] https://www.ncbarblog.com/spring-has-arrived-but-the-national-credit-security-freeze-is-here-to-stay/

The issue of whether AB 2935 is wholly, partly, or not at all preempted by FCRA is not going to be definitively resolved in this analysis or by this committee. The history of preemption disputes between the federal government and the states is one filled with surprises and nuances. It is possible the supporters' legal analysis will prevail. A key policy consideration for the committee, then, if preemption issues are put aside, is whether the requirements placed on CRAs are appropriate and provide a meaningful intervention on behalf of foster youth.

6) **What does AB 2935 do?**

AB 2935 would establish automatic processes in order to protect foster youth's identify and financial well-being. If an inquiry reveals that a foster youth has a credit report – a sign that fraud has occurred – then the CRA must block reporting any of that credit report's information. Moreover, when the foster youth turns 18, the CRA must automatically lift the security freeze.

The above three interventions – freeze, block, then unfreeze- are intended to reduce the need for local agencies to repeatedly engage in "after-the-fact" credit clean-up and to promote efficiencies. As the sponsor argues, by streamlining these processes, AB 2935 would make it easier to remedy identify theft crimes against foster youth

7) **Proposed committee amendments**

Among its provisions AB 2935 proposes to streamline security freeze requests by deeming a county welfare department, a county probation department of DSS as otherwise complying with various identification and proof-of-authorization requirements when the public agency requests a security freeze or the removal of a security freeze on behalf of a foster. However, as drafted, the bill remove the requirement that the request include the foster youth's social security number, which a CRA needs in order to place a freeze.

The committee recommends the following amendment to Section 1785.11.11(a)(2):

> If the request for the placement or removal of a security freeze is for a protected consumer who has been placed in a foster care setting, the credit reporting agency shall deem the requirements of clauses (i) ~~to~~ **<u>and</u>** (iii)~~, inclusive,~~ of subparagraph (~~A~~ **<u>B</u>**) of paragraph (1) to have been met if the request is verifiably from a county welfare department, a county probation department, or the State Department of Social Services, as described in subdivision (a) of Section 10618.6 of the Welfare and Institutions Code.

8) **Support**

The Children's Advocacy Institute at the University of San Diego School of Law is AB 2935's sponsor and argues that AB 2935 would save both credit bureaus and counties time by allowing both to interact with each other more efficiently and categorically. CAI argues AB 2935 is needed because:

> Current federal and state law requires county child welfare or probation departments after a foster child turns 14 years of age to see if credit reports have

been opened in a child's name to ensure foster children obtain assistance in addressing inaccuracies. Some counties devote scarce social worker time actually trying to clean up the report. Others merely point children to self-help and hope for the best. It isn't working.

REGISTERED SUPPORT / OPPOSITION:

Support

Childrens Advocacy Institute (Sponsor)
Just in Time for Foster Youth (JIT) (Co-Sponsor)
Advokids
Angels Foster Family Network
California Alliance of Caregivers
California State University San Marcos Department of Social Work
Children Now
East Bay Children's Law Offices
Los Angeles Dependency Lawyers, INC.
Straight From the Heart INC.
The Law Offices of Dale Wilson

Opposition

None on file

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