Date of Hearing: April 16, 2018

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Monique Limón, Chair
AB 1742 (Quirk) – As Amended April 11, 2018

SUBJECT: Consumer credit reporting agencies: security freeze requests

SUMMARY: Requires a consumer credit reporting agency (CCRA) (i) to place or lift a security freeze on a consumer's credit report no later than 15 minutes upon receiving a request electronically from a consumer and (ii) to offer to submit a security freeze request on behalf of a consumer to all consumer credit reporting agencies that compile and maintain files on consumers on a nationwide basis.

Specifically, **this bill**:

1) Requires a CCRA to place, temporarily lift, or remove a security freeze on a consumer's credit file within 15 minutes of receiving a request electronically from the consumer, subject to receipt of proper identification.

2) Requires a CCRA to offer to submit a security freeze request on behalf of a consumer to all CCRAs that compile and maintain files on consumers on a nationwide basis. If the consumer accepts, a CCRA is required to submit the request to those consumer credit reporting agencies within 15 minutes of receiving a consumer's acceptance electronically and within three days of receiving a consumer's acceptance by mail.

3) Requires a CCRA that receives a request from another CCRA on behalf of a consumer to place, temporarily lift, or remove a security freeze to comply with the request within 15 minutes of receiving it.

EXISTING LAW:

1) Regulates CCRAs via the Consumer Credit Reporting Agencies Act. [Civil Code, Section 1785.1 et seq.]

2) Permits a consumer to place, temporarily lift, or remove a security freeze on his or her credit report by making a request in writing by mail to a CCRA. Defines "security freeze" as a notice placed in a consumer's credit report that prohibits the consumer credit reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer, subject to certain exceptions. If a security freeze is in place, information from a consumer's credit report may not be released to a third party without prior express authorization from the consumer. [Section 1785.11.2]

3) Permits a CCRA to develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a security freeze on a credit report. [Section 1785.11.2]

4) Requires a CCRA to comply with a consumer's request to place, temporarily lift, or remove a security freeze within three days, subject to receipt of proper identification. [Section 1785.11.2]

FISCAL EFFECT: Unknown

COMMENTS:

1) PURPOSE

The author states:

> "Security breaches compromise personal data, and have become an all too common aspect of our modern, connected lifestyles. The most recent attack on Equifax, which compromised the private information of up to 143 million American is a perfect but unfortunate testament to the scale and pervasiveness of the risk. Proactive consumer action to prevent against fraud and theft is a necessity. A credit freeze is one of the simplest and most effective means for a consumer to protect themselves. Unfortunately, the process to freeze credit is time consuming and confusing. Worse, a consumer may be left with a dangerous false sense of security if they are unaware that to fully protect themselves they need to contact each credit agency individually to freeze all of their credit reports.
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> AB 1742 will correct the current confusing credit freeze process. Under AB 1742, when a consumer initiates a credit freeze, the contacted credit reporting agency must offer to initiate a likewise freeze at each of the other credit reporting agencies. The same rules will apply when a freeze is being lifted, either temporarily or permanently. AB 1742 makes straightforward changes to make it easier for Californians to protect themselves from security breaches we know are yet to come."

2) BACKGROUND

On September 7, 2017, Equifax publically disclosed a cybersecurity breach of the company that resulted in the loss of 147.9 million US consumers' personal information. Equifax is one of the big three consumer credit reporting agencies (CCRAs), along with Experian and TransUnion. CCRAs assemble consumer financial information for the purpose of issuing credit reports to third parties. The credit reports contain a historical record of the debts and associated payment information of individuals. The information in a credit file is used to generate a credit score which serves as a quantitative metric of an individual's credit risk, or the likelihood that the individual will pay back a loan. These reports are provided for particular purposes. The most common use of credit reports is to help lenders assess the risk of potential borrowers when underwriting a loan. Credit reports are also used by landlords when evaluating potential tenants and by employers when evaluating potential employees.

According to Equifax, a cybersecurity breach caused by a website vulnerability occurred from mid-May through July 2017.[1] The breach gave criminals access to consumer names,

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[1] Cybersecurity Incident & Important Consumer Information. September 7, 2017.

Social Security numbers, birth dates, addresses, and in some instances, driver's license numbers. Credit card numbers were accessed for approximately 209,000 United States (US) consumers, as were documents with personal identifying information for approximately 182,000 US consumers.

In response to the Equifax breach, consumer protection advocates and state regulators, including the California Department of Business Oversight and the California Attorney General, recommended that consumers consider placing a security freeze on their credit files. A security freeze is among the strongest actions that a consumer can take to protect himself or herself from the risk of a fraudulent credit account being issued using the consumer's stolen information. Prior to opening a new credit line, a consumer must provide proper identification, including a unique personal identification number or password provided by the CCRA, with a request to the CCRA to temporarily lift or remove the security freeze. Under existing law, CCRAs can charge up to $10 to place, temporarily lift, or remove a credit freeze, as specified in subdivision (m) of Section 1785.11.2 of the Civil Code. SB 823 of the current legislative session would prohibit CCRAs from charging any fees for these services.

A security freeze is not the only option that consumers have to protect themselves from the risk of fraud. A consumer may place a security alert on his or her credit report, which requires a CCRA to notify a consumer when the consumer's identity may have been used without the consumer's consent. A CCRA is also required to notify each person that requests consumer credit information in connection with the application for an extension of credit that a security alert is in place, and the person processing the credit application is required to take reasonable steps to verify the consumer's identity. Consumers do not have to pay for a security alert. Security alerts remain in place for at least 90 days and must be renewed by the consumer upon expiry. If the security alert lapses or a consumer's identity is sufficiently compromised, the risk of a fraudulent credit line being opened in a consumer's name is higher with a security alert than with a security freeze. A risk-averse consumer may prefer the additional security provided by a security freeze.

CCRAs and other companies offer products and services related to identity theft protection and credit monitoring. These services typically cost from $10 to $30 per month. Many consumers may prefer the less expensive option of placing a security freeze on their credit report, especially if the process for placing a security freeze was more convenient and free (as proposed by this bill and SB 823, respectively).

3) INDUSTRY CONCERNS MAY BE OVERBLOWN

The Consumer Data Industry Association (CDIA), an international trade association whose members include CCRAs, expressed concern about two provisions of this bill. First, CDIA states that it is risky to require placement of a freeze within 15 minutes if the request is made electronically. According to CDIA, the verification and authentication process of electronic requests can take longer than 15 minutes. To ensure that a CCRA has time to verify that the right file is being frozen, CDIA requests that the existing requirement to place the freeze within three business days remain in place. Without more detail about the specific verification processes conducted by CCRAs, it is difficult to evaluate the industry's concerns.

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https://www.equifaxsecurity2017.com/2017/09/07/equifax-announces-cybersecurity-incident-involving-consumer-information/

Changing the three day requirement in existing law to the proposed 15 minute requirement is unlikely to materially reduce the risk of financial fraud for consumers, and the author may consider amending the bill if the industry provides more information regarding their concern.

Second, the CDIA objects to the requirement that a CCRA transmit freeze requests to other CCRAs on the consumer's behalf. CDIA claims that state laws regarding security freezes vary across states and complying with the proposed requirement in this bill may lead to problems for consumers. Given that this bill would apply to California residents only, it is not clear how complying with the requirement to share a freeze request from a California consumer with other CCRAs would run afoul of laws in other states. Additionally, CCRAs are already required by federal law to forward requests for security alerts to other major CCRAs, and the CCRAs can establish a similar process for sharing freeze requests.

In addition to the speciousness of the argument about varying laws in different states, CDIA's argument concludes that "there are some things that consumers must do for themselves if they have been or suspect they have been a victim of crime." CDIA's attempt to push the responsibility of protecting confidential data back to the consumer may be ill-conceived given that the Equifax data breach is the primary cause for exposing over 147 million Americans to a heightened risk of identity theft in the first place.

4) CONSUMER BENEFITS

The Equifax data breach led to widespread concern among consumers with many wanting to know their options for protecting themselves from identity theft and credit fraud. Consumer advocates and government regulators generally agree that placing a security freeze on one's credit report is among the strongest protections available to consumers. This bill would increase the convenience of placing, lifting, and removing a security freeze, likely leading to higher adoption of security freezes and lowering the overall risk of fraudulent credit lines being opened by criminals. Not only does this benefit the consumer, but it also reduces fraud-related costs borne by creditors.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California Senior Legislature
Consumers Union

Opposition

Consumer Data Industry Association

Analysis Prepared by: Michael Burdick / B. & F. / (916) 319-3081