

Date of Hearing: January 8, 2018

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Monique Limón, Chair

AB 608 (Irwin) – As Amended January 3, 2018

SUBJECT: Consumer credit reports: security freezes: protected consumers

SUMMARY: Prohibits consumer credit reporting agencies (CCRAs) from charging a fee to place or remove a security freeze on the credit file of a protected consumer.

Specifically, **this bill:**

- 1) Deletes the requirement in Civil Code 1785.11.11 that a protected consumer's representative shall pay a fee to place a security freeze on the credit file of a protected consumer.
- 2) Prohibits CCRAs from charging a fee for any service related to placing or removing a security freeze on the credit file of a protected consumer.

EXISTING LAW:

- 1) Regulates CCRAs via the Consumer Credit Reporting Agencies Act. [Civil Code, Section 1785.1 et seq. All further references are to the Civil Code]
- 2) Defines the following terms [Section 1785.11.9]:
 - a) "Protected consumer" means an individual who is under 16, incapacitated, or under a county welfare or county probation department's jurisdiction;
 - b) "Representative" means a person who provides sufficient proof of authority to act for a protected person, as specified, and would include a county welfare or probation department for a child in foster care, but would not include a foster parent;
 - c) "Security freeze" means a restriction that a CCRA places on a protected consumer's record or file that prohibits the CCRA from releasing any report or information about a protected consumer, except as authorized by statute.
 - d) "Sufficient proof of authority" means documentation that shows a representative has authority to act for a protected consumer, including: a court order; a valid power of attorney; a written, notarized statement; or in the case of a foster child a written communication from a county welfare or probation department specifying that the protected consumer is under the department's jurisdiction;
 - e) "Sufficient proof of identification" means documentation that identifies a protected consumer or a representative, including: a social security number or card; a certified or official copy of a birth certificate; a copy of a California driver's license or identification card or other government-issued identification; a copy of a utility bill that shows name and address; or in the case of a foster child a written communication from a county welfare or probation department certifying that the protected consumer is under the department's jurisdiction.

- 3) Requires a CCRA to place a security freeze upon the request of the protected consumer's representative. The representative must provide sufficient proof of identification and sufficient proof of authority. [Section 1785.11.11(a)]
- 4) Requires a CCRA, if it does not have a file on the protected consumer, to create a record for the protected consumer and to place the security freeze within 30 days of receiving a request and to send written confirmation within 10 days of placing the freeze. [Section 1785.11.11(b) (d)]
- 5) Prohibits the CCRA from releasing information from a protected consumer's frozen report or record until the protected consumer (or representative) either removes the freeze or the CCRA removes the freeze because of a material misrepresentation of fact. [Section 1785.11.11(e) (f)]
- 6) Requires that in order to remove a freeze, the protected consumer (or representative) must submit a request for removal to the CCRA, as specified by the CCRA and meet the same requirements specified above for placing a freeze and allows a consumer to act for him- or herself upon presenting proof of emancipation or that he or she is at least 16 years old. [Section 1785.11.11(g)]
- 7) Allows CCRA's to charge a \$10 fee for placing or removing a security freeze, unless the protected consumer is a documented identity theft victim, the protected consumer is under 16 and the CCRA has an existing record on the protected consumer at the time of the request, or the request is for a foster child. [Section 1785.11.11(i)]
- 8) Exempts from the security freeze (i.e., permits access to "frozen" records for) the following [Section 1785.11.10]:
 - a) Banks and other lenders who access a consumer's credit report only for the purpose of reviewing existing accounts the consumer has with the bank or lender.
 - b) Resellers of credit report information.
 - c) Check services or fraud prevention services that issue check fraud and exchange traded fund (ETF) fraud reports; and deposit account information services that issue reports on account closures due to fraud, substantial overdrafts, automated teller machine (ATM) abuse, or similar negative information for use by banks who are reviewing existing consumer accounts.
 - d) Credit monitoring services when the protected consumer (or the representatives) has subscribed to the services.
 - e) The protected consumer himself or herself (or the representative) upon request.
 - f) Any state or local agency, law enforcement agency, trial court, or private collection agency acting pursuant to a court order, warrant, or subpoena.
 - g) A child support agency acting under state or federal law to collect child support.
 - h) The Department of Health Care Services acting to investigate Medi-Cal fraud.

- i) The Franchise Tax Board acting to investigate or collect delinquent taxes, unpaid court orders, or to fulfill its other statutory responsibilities.

FISCAL EFFECT: None.

COMMENTS:

The author states the following:

“In light of the Equifax Data Breach, and the information learned from the Joint Oversight Hearing of the Banking and Finance Committee; Privacy and Consumer Protection Committee; and Select Committee on Cybersecurity, fees for security freezes are more appropriately seen as a windfall for the mishandling of consumer data rather than a reasonable service based fee.

Consumer Credit Reporting Agencies profit from the involuntary aggregation of personal consumer data which is packaged and sold to lenders and other financial institutions. Californians should not have to pay a premium to be protected from the misuse of their personal information made possible by the Consumer Credit Reporting business model and the poor security practices of Equifax.

Those who benefit from the Consumer Credit Reporting business model, namely lenders and other financial institutions who seek to profit from extending credit to consumers, are more appropriate targets for fees and charges by the Consumer Credit Reporting Agencies.”

In response to the Equifax data breach, consumer advocacy groups and governmental organizations, including the California Department of Business Oversight and the California Attorney General, recommend that consumers consider placing a security freeze on their credit files to prevent fraudulent accounts from being opened in their names. Existing law in California permits CCRAs to charge a fee of up to \$10 to process a security freeze. This bill prohibits CCRAs from charging any fee for placing or removing a security freeze on credit files of protected consumers.

Eliminating the \$10 fee is likely to increase the number of protected consumers’ representatives who elect to place credit freezes. Research in the field of behavioral economics strongly suggests that consumers have a significant response to “free” goods. The label of “free” creates a psychological effect that causes consumers to perceive the good to be more valuable. By removing the fee, California will incentivize higher adoption of credit freezes. A credit freeze significantly lowers the risk that fraudulent lines of credit will be opened in the name of a protected consumer, which provides benefits to both consumers and financial institutions by avoiding costly consequences of fraudulent transactions in the future.

The author’s statement frames the fee for security freezes “as a windfall for the mishandling of consumer data rather than a reasonable service based fee.” After the Equifax data breach, some equity analysts and other stock market commentators suggested that the company may actually benefit from the breach as consumers seek extra protection and credit monitoring offered by CCRAs. Eliminating the fee for security freezes removes a perverse incentive that rewards CCRAs for misbehavior.

REGISTERED SUPPORT / OPPOSITION:

Support

CALPIRG

Opposition

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