

Legislative Analysis



SECURITY FREEZE ACT: CREDIT REPORTS

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Senate Bill 174 (Substitute S-2)

Sponsor: Sen. John Proos

House Committee: Financial Services

Senate Committee: Banking and Financial Institutions

Complete to 10-22-13

A BRIEF SUMMARY OF SENATE BILL 174 AS PASSED BY THE SENATE 10-16-13

The bill would create the Security Freeze Act, under which a consumer reporting agency would be required to place or remove a security freeze on the credit report of a consumer at the request of the consumer or, in the case of a "protected consumer," at the request of the consumer's authorized representative.

A "protected consumer" is defined as a consumer under 16 years of age or an incapacitated person or a protected person for whom a guardian or conservator has been appointed under Article V of the Estates and Protected Individuals Code (EPIC). The representative making a request would have to provide proof of authority and identification

Generally speaking, a security freeze would prohibit a consumer reporting agency from releasing a credit report or any information derived from it unless the release was authorized by the consumer or, in the case of a protected consumer, by an authorized representative. A security freeze would remain in effect until the consumer or an authorized representative requested the security freeze to be removed. The bill would provide for both temporary and permanent removal if certain conditions were met.

A consumer reporting agency could charge a \$10 fee for each placement, temporary lifting or removal of a security freeze (except in certain cases related to identity theft allegations).

The act contains four articles: Article One contains definitions. Article Two applies to consumers generally. Article Three applies to a "protected consumer." Article Four addresses the payment of fees and violations of the act; the act is to be enforced by the attorney general through injunctive and other appropriate judicial relief and remedy. The act says it does not create a private cause of action for violations.

The bill describes how a consumer or an authorized consumer is to seek the placement or removal of a security freeze and contains timelines for consumer reporting agencies to respond.

The new act also contains a list of circumstances when the security freeze restrictions would not apply.

The freeze would not apply to anyone acting under a court order, warrant, or subpoena; or a unit of state or local government enforcing child support obligations, engaged in tax-related investigations, collecting delinquent taxes, or investigating fraud (in the case of the Department of Human Services), or in the performance of other duties provided for by law.

Exceptions also exist for those with whom a consumer has an account, contract, or debtor-creditor relationship for the purpose of account review or collecting financial obligations owed; a person given access for the purpose of extending credit; a person administering a credit file monitoring subscription service to which a consumer or protected consumer has subscribed; a person providing a consumer or authorized representative with a copy of the credit report at the consumer's or representative's request; and a person engaged in setting or adjusting insurance rates, adjusting an insurance claim, or underwriting an insurance risk.

Additional exemptions apply to a check services or fraud prevention services company issuing reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar payments methods; a deposit account information service company issuing reports on account closures due to fraud, substantial overdrafts, or ATM abuse; a consumer reporting agency database or file used solely for criminal record information, personal loss history information, fraud prevention, or detection, or employment or tenant screening; and a consumer reporting agency that is only engaged in reselling credit information by assembling and merging information in a database of consumer reporting agencies and that does not maintain a permanent database of credit information.

A "consumer reporting agency" is defined as a person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing credit reports to third parties and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing credit reports.

The bill contains an effective date of January 1, 2014.

FISCAL IMPACT:

Senate Bill 174 would not have a significant fiscal impact on the state or local units of government.

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