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BILL



ANALYSIS

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Senate Bill 174 (as introduced 2-2-13)  
Sponsor: Senator John Proos  
Committee: Banking and Financial Institutions

Date Completed: 9-18-13

### **CONTENT**

**The bill would create the "Childhood Identity Theft Protection Act", which generally would require a consumer reporting agency to place or remove a security freeze on consumer report information for a protected consumer, if the request met certain conditions. Protected consumers would include Michigan residents who were under 16 years old, incapacitated, or under the appointment of a guardian or conservator.**

#### **Definitions**

"Consumer" would mean an individual who resides in this State. "Protected consumer" would mean a consumer who is either: 1) under the age of 16 years at the time a request for the placement of a security freeze is made; or 2) an incapacitated individual or a protected individual for whom a guardian or conservator has been appointed under Article V of the Estates and Protected Individuals Code.

"Consumer report" would mean any written, oral, or other communication by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is issued or 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 any of the following: 1) credit or insurance to be used primarily for personal, family, or household purposes; 2) employment purposes (evaluating a consumer for employment, promotion, reassignment, or retention as an employee); or 3) any other purpose authorized under Section 604 of the Fair Federal Credit Reporting Act (which limits the purposes for which a consumer reporting agency may furnish a consumer report).

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

If a consumer reporting agency does not have a file pertaining to a protected consumer, "security freeze" would mean a restriction that is placed on the protected consumer's record under the proposed Act, and prohibits the consumer reporting agency from releasing the protected consumer's record except as provided in the Act. If a consumer reporting agency has a file pertaining to the protected consumer, "security freeze" also would include a

restriction that prohibits the consumer reporting agency from releasing any information derived from the protected consumer's consumer report except as provided in the Act.

"File" would mean all of the information on a consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

"Record" would mean a compilation of information that meets several criteria. The information would have to identify a protected consumer, and be created by a consumer reporting agency solely for the purpose of complying with this Act. The information could not be created or used to consider the protected consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is issued or 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 any of the following: 1) credit or insurance to be used primarily for personal, family, or household purposes; 2) employment purposes; or 3) any other purpose authorized under Section 604 of the Fair Credit Reporting Act.

### Placing a Security Freeze

The proposed Act would require a consumer reporting agency to place a security freeze on consumer report information for a protected consumer if the following conditions were met:

- The protected consumer's representative submitted a request to the agency at the place and in the manner that the agency specified.
- The representative gave the agency sufficient proof of identification of the protected consumer and the representative.
- The representative gave the agency sufficient proof of authority to act on behalf of the protected consumer.
- The representative paid the agency the appropriate fee for a security freeze.
- The agency received the request for a security freeze from the representative.

("Sufficient proof of identification" would mean information or documentation that identifies a protected consumer, including any of the following: 1) a Social Security number or a copy of a Social Security card issued by the Social Security Administration; 2) a certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate; 3) a copy of an operator's license or chauffeur's license, an official State personal identification card, or any other government-issued identification; and 4) a copy of a bill, including a bill for telephone, sewer, septic tank, water, electric, oil, or natural gas services, that shows a name and home address.

"Sufficient proof of authority" would mean documentation showing that a representative has authority to act on behalf of a protected consumer, including any the following: 1) an order issued by a court of law; 2) a lawfully executed and valid power of attorney; and 3) a written, notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected consumer.)

If a representative requested a security freeze for a protected consumer, and the agency that received the request did not have a file for the protected consumer, the agency would have to create a record for that consumer.

Within 30 days after receiving a representative's request for a security freeze that met the conditions described above, the agency would have to place a security freeze for the protected consumer.

A security freeze would have to remain in effect until it was removed in accordance with the provisions discussed below.

### Removing a Security Freeze

A consumer reporting agency would have to remove a security freeze within 30 days of a protected consumer's or protected consumer's representative's request, if the following conditions were satisfied.

The protected consumer, or his or her representative, would have to submit the request at the place and in the manner that the agency specified. The consumer or representative would have to give the agency the information specified below.

If a protected consumer requested an agency to remove a security freeze, the consumer would have to provide both of the following:

- Proof that the sufficient proof of authority for the protected consumer's representative to act on behalf of that consumer was no longer valid.
- Sufficient proof of identification of the protected consumer.

If a protected consumer's representative requested an agency to remove a security freeze, the representative would have to do all of the following:

- Provide sufficient proof of identification of the protected consumer and the representative.
- Provide sufficient proof of authority to act on behalf of the protected consumer.
- Pay the agency the appropriate fee for removal of a security freeze.

Also, an agency could remove a security freeze or delete a protected consumer's record if the security freeze were placed or the record created based on the protected consumer's, or his or her representative's, material misrepresentation of fact.

### Exceptions

The proposed Act would not apply to the use of a protected consumer's consumer report or record by any of the following:

- A person administering a credit file monitoring subscription service to which either the protected consumer, or the consumer's representative on his or her behalf, had subscribed.
- A person providing the protected consumer, or his or her representative, with a copy of the consumer's credit report on request of the protected consumer or representative.
- A person providing check services or fraud prevention services who issues reports on incidents of fraud, and authorizations for approving or processing negotiable instruments, electronic funds transfers, or similar payment methods.
- A person providing deposit account information services that issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information about a consumer to an inquiring bank or financial institution only for use in reviewing a consumer request for a deposit account at that bank or financial institution.

The Act also would not apply to the use of a protected consumer's consumer report by a consumer reporting agency if both of the following conditions were met:

- The agency acted only as a reseller of credit information by assembling and merging information contained in a database of another consumer reporting agency or multiple consumer reporting agencies.
- The agency did not maintain a permanent database of credit information from which new consumer reports were produced.

### Fees

A consumer reporting agency could charge a reasonable fee for each placement or removal of a security freeze for a protected consumer. The fee could not exceed \$5.00. An agency could not charge a fee for any other services performed under the Act.

An agency could not charge any fee if the protected consumer's representative had filed a police report of alleged identity theft against the protected consumer under the Crime Victim's Rights Act, and provided a copy of the report to the agency.

Fees also would be impermissible for requests for the placement or removal of a security freeze for a protected consumer who was under 16 years old at the time of the request, if the consumer reporting agency had a consumer report pertaining to the protected consumer.

### Consumer Cause of Action

A consumer could bring an action against a consumer reporting agency for an intentional or negligent violation of the proposed Act. The consumer would be entitled to recover his or her actual damages, plus reasonable attorney fees and court costs.

Legislative Analyst: Glenn Steffens

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Dan O'Connor

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.