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Senate Bill 174 (as enacted)
Sponsor: Senator John Proos
Senate Committee: Banking and Financial Institutions
House Committee: Financial Services

PUBLIC ACT 229 of 2013

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RATIONALE

Identity theft has been and continues to be a problem in Michigan and throughout the country. Identity theft occurs when someone obtains another individual's personal information, such as Social Security number or credit card account number, and uses it without permission for personal gain. For example, an identity thief might use the information to open an account and incur debt in the victim's name. In 2004, Michigan enacted a package of legislation to address the problem. These measures included the Identity Theft Protection Act, the Social Security Number Privacy Act, and related amendments to the Michigan Penal Code. At that time, identity theft was said to be the fastest growing crime in the United States. It still is, according to the Michigan State Police website¹, and Michigan had the fourth-highest identity theft complaint rate among the states in 2013, according to Federal Trade Commission data.²

In addition to the steps already been taken to prevent and mitigate identity theft, it was suggested that the State should enable consumers to place a security freeze on credit reports produced by consumer reporting agencies, or credit bureaus. These entities collect and aggregate data on individuals, including personal information, such as Social Security numbers and financial data, to produce the reports. Creditors, lenders, and other parties routinely furnish information to and request information from consumer reporting agencies for credit risk assessment, credit scoring, employment, leasing property, and other purposes. Freezing a credit report prevents the agency from releasing information regarding a consumer, and is one way to deter criminals from opening an account or taking out a loan in the person's name.

CONTENT

The bill enacted the "Security Freeze Act" to do the following:

- Require a consumer reporting agency to place a security freeze on the credit report of a consumer or a protected consumer, at the request of the consumer or the protected consumer's authorized representative.**
- Prohibit a consumer reporting agency from releasing a consumer's credit report or any information from it, without the consumer's permission, while a freeze is in place.**
- Require a consumer reporting agency to remove a consumer's security freeze, at the request of the consumer, protected consumer, or authorized representative.**
- Allow a consumer to have his or her security freeze temporarily lifted.**

¹ "Because Identify Theft is usually part of a larger criminal enterprise, the theft of personal information is the fastest growing crime." http://www.michigan.gov/msp/0,4643,7-123-1589_35832-114693--,00.htm. Retrieved 3-31-14.

² *Consumer Sentinel Network Data Book for January – December 2013*, Federal Trade Commission, February 2014. The rankings are based on unverified consumer complaints per 100,000 population.

- **Allow a consumer reporting agency to charge up to \$10 for placing, removing, or temporarily lifting a security freeze, unless a consumer or protected consumer has filed a police report of alleged identity theft.**
- **Specify entities and uses to which the security freeze requirements do not apply.**

The Act took effect on January 1, 2014.

Definitions

The Act defines "consumer" as an individual who resides in this State. "Protected consumer" means either: 1) an individual who is under 16 years of age at the time a request for the placement of a security freeze is made; or 2) 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.

"Credit report" means any written, oral, or other communication of any information by a consumer reporting agency that is related to a consumer's creditworthiness, credit standing, or credit capacity, and 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 credit.

"Consumer reporting agency" means 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 credit reports to third parties and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing credit reports.

"Security freeze" means a restriction placed on a consumer's credit report at the request of the consumer that prohibits a consumer reporting agency from releasing the consumer's credit report or any information derived from it without the express authorization of or on behalf of the consumer.

"Security freeze for a protected consumer" means a security freeze that either is placed on the protected consumer's record, if a consumer reporting agency does not have a file pertaining to the protected consumer, or is placed on the protected consumer's credit report if a consumer reporting agency does have a file pertaining to the protected consumer; and that prohibits the agency from releasing the protected consumer's record, or his or her credit report or any information derived from it, except as provided in the Act.

Consumers: Placing a Security Freeze

The Act requires a consumer reporting agency to place a security freeze on a consumer's credit report if all of the following conditions are met:

- The agency receives a request from the consumer for placement of the security freeze.
- The consumer submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the agency.
- The consumer gives the agency sufficient proof of identification (defined below) of the consumer.
- The consumer pays the agency the appropriate fee.

Within five business days after receiving a request that meets these requirements, the agency must place a security freeze for the consumer. Within five business days after placing the security freeze, the agency must: 1) send a written confirmation of the freeze to the consumer; 2) give the consumer a unique personal identification number (PIN) or password to be used when authorizing the release of his or her credit report to a specific person or for a specific period of time; and 3) give the consumer a written statement of the procedures for requesting the agency to remove or temporarily lift a security freeze.

If a security freeze is in place, a consumer reporting agency may not release the consumer's credit report or any information derived from it without the consumer's express prior authorization, unless he or she temporarily lifts the security freeze.

A security freeze on a consumer's credit report must remain in effect until it is: 1) temporarily lifted at the consumer's request; 2) removed at the consumer's request; or 3) removed by the consumer reporting agency because the freeze was placed based on a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a security freeze based on misrepresentation, it must notify the consumer in writing of that intent at least five business days before removing the security freeze.

("Sufficient proof of identification" means information or documentation that identifies a consumer, a protected consumer, or a representative of a protected consumer, including any of the following:

- A Social Security number or a copy of a Social Security card issued by the Social Security Administration.
- A certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate.
- A copy of an operator's license or chauffeur's license, an official State personal identification card, or any other government-issued identification.)

Protected Consumers: Placing a Security Freeze

A consumer reporting agency must place a security freeze on a protected consumer's credit report if the agency receives a request from the representative of the protected consumer for the freeze and the representative does all of the following:

- Submits the request to the agency as specified by the agency.
- Gives the agency sufficient proof of identification for the protected consumer and the representative.
- Gives the agency sufficient proof of authority.
- Pays the agency the appropriate fee.

("Sufficient proof of authority" means 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 representative's authority to act on behalf of a protected consumer.)

Within 30 days after receiving a request that meets the Act's requirements, the agency must place a security freeze for the protected consumer.

If the agency does not have a file pertaining to the protected consumer when the agency receives the request, it must create a record for the protected consumer.

("File" means all of the information about a consumer that is recorded and retained by a consumer reporting agency regardless of how the information is stored. "Record" means a compilation of information that identifies a protected consumer; is created by a consumer reporting agency solely for the purpose of complying with the Act; and may 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 for any purpose authorized under Section 604 of the Federal Fair Credit Reporting Act (which allows a consumer reporting agency to furnish a consumer report for limited purposes).)

If a security freeze is in place for a protected consumer, a consumer reporting agency may not release his or her credit report, any information derived from it, or any record created for the protected consumer.

The security freeze will remain in effect until: 1) the protected consumer or his or her representative requests the consumer reporting agency to remove the security freeze; or 2) the agency removes the freeze because it was placed based on a material misrepresentation.

An agency may remove a security freeze for a protected consumer or delete a protected consumer's record if the security freeze was placed or the record was created based on the protected consumer's, or his or her representative's, material misrepresentation of fact.

Removing a Security Freeze

If a consumer does all of the following, a consumer reporting agency must remove a security freeze within three days after receiving a request for removal:

- Contacts the agency in the manner it specifies for making a request for removal.
- Requests the removal of the security freeze.
- Provides the agency with sufficient proof of identification.
- Includes with the request the PIN or password that the agency gave the consumer upon placing the security freeze.
- Pays the appropriate fee.

A consumer reporting agency must remove a security freeze for a protected consumer within 30 days after the protected consumer or his or her representative submits a request for removal in the manner specified by the agency, pays the appropriate fee, and does either of the following:

- Provides proof that the sufficient proof of authority for the protected consumer's representative to act on the consumer's behalf is no longer valid, and provides sufficient proof of identification of the protected consumer, if the request for removal is submitted by the protected consumer.
- Provides sufficient proof of identification of the protected consumer and the representative, and sufficient proof of authority to act on the protected consumer's behalf, if the request for removal is submitted by the representative.

Temporarily Lifting a Security Freeze

A consumer who does all of the following may temporarily lift a security freeze to allow access to his or her credit report by a specific person or for a specific period of time while the security freeze is in place:

- Contacts the consumer reporting agency as specified by the agency for requesting a temporary lift.
- Requests that the agency temporarily lift the security freeze.
- Provides the agency with sufficient proof of identification of the consumer.
- Includes in the request the PIN or password that the agency gave the consumer upon placing the security freeze.
- Provides the proper information regarding the person who may receive the credit report or the time period during which the credit report is to be available.
- Pays the appropriate fee.

A consumer reporting agency must temporarily lift a security freeze within three business days after receiving a request. If a consumer requests removal via phone, e-mail, or secure website connection, however, the agency must temporarily lift the security freeze within 15 minutes after receiving the request, unless a delay is caused by any of the following:

- An act of God, including a fire, earthquake, hurricane, storm, or similar natural disaster.
- A third party's unauthorized or illegal act, including an act of terrorism, sabotage, riot, or vandalism, or a labor strike or other labor dispute that disrupts the agency's operations.
- An interruption of the agency's operations, including an electrical failure, unanticipated delay in delivery, or computer hardware or software failure that inhibits response time.

- Governmental action, including an emergency order or regulation, or a judicial or law enforcement action.
- Regularly scheduled maintenance of, or updates to, the agency's systems that occurs outside of normal business hours.
- Commercially reasonable maintenance of, or repair to, the agency's systems that is unexpected or unscheduled.

Request for Access

If, in connection with an application for credit or for any other use, a person requests access to a consumer's credit report while a security freeze is in place and the consumer does not authorize access to the report, the person may treat the application as incomplete.

Fees

A consumer reporting agency may charge a fee of up to \$10 for placing, temporarily lifting, or removing a security freeze for a consumer. An agency also may charge a fee up to \$10 for placing or removing a security freeze for a protected consumer, charged to the consumer or his or her representative.

An agency may not charge a fee, however, if a consumer, protected consumer, or protected consumer's representative has filed a police report of alleged identity theft against the consumer or protected consumer and gives a copy of the report to the agency. An agency also may not charge a fee if the request for placement or removal is for a protected consumer who is under 16 years old at the time of the request and the agency has a credit report pertaining to him or her.

Violations

The Attorney General may apply to the Ingham County Circuit Court, or to the circuit court for the county in which a violation of the Security Freeze Act allegedly occurred or in which an alleged violator resides or is located, for injunctive or other appropriate judicial relief or remedy.

The Act states that it does not create a private cause of action for a violation.

Exceptions

The provisions of the Act concerning a security freeze on a consumer's or a protected consumer's credit report do not apply to any of the following entities or uses:

- A person that is acting under a court order, warrant, or subpoena.
- A person that administers a credit file monitoring subscription service to which a consumer or protected consumer has subscribed.
- A person that provides the consumer or the consumer's representative with a copy of the consumer's credit report on request of the consumer or representative.
- A check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar payment methods.
- A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, or ATM abuse, or provides similar information about a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.
- A consumer reporting agency database or file that consists entirely of consumer information concerning, and used solely for criminal record information, personal loss history information, fraud prevention or detection, employment screening, and/or tenant screening.
- A consumer reporting agency that is only engaged in reselling credit information by assembling and merging information contained in a database of one or more agencies, and does not maintain a permanent database of credit information pertaining to reselling credit information.

In addition, the provisions regarding a security freeze on a consumer's credit report do not apply to any the following entities or uses:

- A person, or a subsidiary, affiliate, agent, or assignee of a person, with which the consumer has, or before assignment had, an account, contract, or debtor-creditor relationship, for the purpose of account review or collecting the financial obligation owing for the account, contract, or debt.
- A person that was given access to a consumer's credit report for the purpose of facilitating an extension of credit to the consumer or another permissible use.
- A unit of State or local government that administers a program for establishing and enforcing child support obligations.
- The Department of Human Services in connection with a fraud investigation.
- Any State or local taxing authority in connection with an investigation, the collection of delinquent taxes or unpaid court orders, or the performance of any other duty provided for by law.
- A person engaged solely in setting or adjusting an insurance rate, adjusting an insurance claim, or underwriting an insurance risk, to the extent not prohibited by State law.
- A person that furnishes a credit report, or requests the provision of a credit report, that relates to a consumer in connection with a credit or insurance transaction not initiated by a consumer, if the requirements of the Fair Credit Reporting Act are met.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to the Identity Theft Assistance Center, in 2012, identity thieves stole more than \$21.0 billion from 12.6 million victims nationwide. Identity thieves can use victims' information to drain bank accounts, apply for loans, charge purchases on credit cards, enter into leases, open utility accounts, apply for government benefits, or even receive medical treatment through victims' health insurance. Identity theft also can wreak havoc on a victim's credit rating-- something that is critical to functioning in today's society.

The Security Freeze Act will help protect Michigan residents from identity theft by requiring consumer reporting agencies to freeze credit reports at the request of a consumer. If a consumer wants to avoid becoming a victim of identity theft, or suspects that he or she is or might be a victim of identity theft or other fraud, the consumer can act to prevent a criminal from obtaining his or her personal and financial information from a credit reporting agency. Requesting a security freeze also enables a consumer to protect his or her credit rating.

In addition, the Act provides much-needed protection for children, who are especially susceptible to identity theft. According to the Identity Theft Assistance Center, one in 40 households with minor children is affected by child identity theft. Because they have clean or nonexistent records, children reportedly are 35 times more likely than adults to be victims. Criminals are able to steal a child's identity by tying a different name and date of birth to the child's Social Security number. A parent of a child victim is faced with proving that his or her child did not open accounts, make purchases, or take part in whatever activities have been wrongfully attributed to the child. Resolving this can be a difficult and lengthy process. Also, since minors typically do not run credit checks until they are near adulthood, child victims can be unaware of identity theft for years.

Often, if a child has a credit report, he or she is already a victim of fraud. By allowing a child's parent, guardian, or other authorized party to place a security freeze on the child's credit report, the Act may save many children and young adults from serious financial problems. Moreover, the Act offers preemptive measures to protect children and other protected consumers. If there is no credit report on file for the person, the consumer reporting agency must create a record and place a freeze on it, when a request is made.

At the time the legislation was enacted, Michigan was only state that did not allow for some type of credit freeze. Michigan now has joined the rest of the states that offer this option to consumers. Although a credit freeze is not guaranteed to stop identity theft—since criminals can steal personal information from existing accounts—it is one way for consumers to protect themselves when they are individually targeted or when mass data breaches occur.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

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

Fiscal Analyst: Josh Sefton

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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.