

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Rawson DATE TYPED 2/23/05 HB _____

SHORT TITLE Credit Report Freeze for Identity Theft SB 701

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 246, HB 734

SOURCES OF INFORMATION

LFC Files
Federal Trade Commission

SUMMARY

Synopsis of Bill

Senate Bill 701 enacts three consumer protection requirements on credit bureaus and on entities using credit reports related to identity theft: security alert, security freeze, and blocking of fraudulent information.

Security Alert: The bill requires a credit bureau, at the request of a customer, to place a security alert on the consumer's credit report that will warn anyone receiving information that the consumer's identity may have been used without consent. The security alert shall be maintained for ninety days, at which time the consumer is entitled to a free copy of his/her credit report. The bill requires recipients of a credit report that contains a security alert to take reasonable steps to verify the consumer's identity prior to extending credit.

Security Freeze: Senate Bill 701 also allows a consumer to request a that credit bureau place a security freeze on the consumer's credit report that will prohibit a credit bureau from releasing the information in the credit report without the consumer's express written authorization. The bill establishes a process by which a consumer can grant authorization to release information.

Block: The bill requires credit bureaus to block from inclusion in the credit report any informa-

tion the consumer alleges is the result of identity theft. The bill provides a process for the credit bureau to unblock the information. If information is unblocked, the credit bureau shall promptly notify the consumer and the consumer shall have a right to receive a free credit report each month for up to twelve consecutive months.

Significant Issues

The provisions providing for security alerts and the blocking of fraudulent information are already covered in federal law.

The Fair and Accurate Credit Transactions (FACT) Act was passed by Congress in 2003 and amends the Fair Consumer Reporting Act (FCRA).

With respect to security alerts, the FACT Act provides that a credit bureau, upon a consumer's assertion that the consumer has become a victim of fraud or identity theft, shall include a fraud alert in the file for not less than 90 days and refer the information to each of the other consumer reporting agencies. The consumer may request a free copy of his/her report.

The FACT Act also provides for extended alerts lasting 7 years. During the first 5 years of the alert, the credit bureaus must exclude the consumer from the marketing lists it sells to third parties. The law allows the consumer 2 free reports within the first 12 months.

The federal law prohibits users of credit reports from establishing new credit plans or extending credit to a consumer with a security alert unless the user utilizes reasonable policies to verify the identity of the person.

With respect to blocking, the FACT Act provides:

15 USCS § 1681c-2 (2005) Block of information resulting from identity theft

(a) Block. Except as otherwise provided in this section, a consumer reporting agency shall block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft, not later than 4 business days after the date of receipt by such agency of--

- (1) appropriate proof of the identity of the consumer;
- (2) a copy of an identity theft report;
- (3) the identification of such information by the consumer; and
- (4) a statement by the consumer that the information is not information relating to any transaction by the consumer.

This provision went into effect on December 1, 2004. The law also provides authority to the consumer reporting agency to decline or rescind a block.

The security alert and blocking provisions of Senate Bill 701 may be pre-empted by the FACT Act, which prescribes 6 areas where states are specifically pre-empted from enacting their own legislation. Two of those areas are regulations relating to the time by which a consumer reporting agency must take any action in any procedure related to the disputed accuracy of information in a consumer's file, and regulations relating to information contained in consumer reports. Whether or not the bill is pre-empted may be a moot point since it would appear that the FACT

Act provides similar or stricter protections. The only exception seems to be that Senate Bill 701 would provide the consumer with a greater number of free credit reports.

Federal law does not provide for security freezes, as provided in Senate Bill 701. Security freezes most likely do not fall into any of the categories that are preempted and would be allowed under the federal law.

FISCAL IMPLICATIONS

The bill does not create any new requirements for state agencies and thus, there is no fiscal impact.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bills 246 and 743 both provide for the blocking of fraudulent information on credit reports.

TECHNICAL ISSUES

Section 1 of the bill adds a definition of identity theft to Section 56-3-1 NMSA 1978 that is consistent with the current definition in Section 30-16-2.1. However, it may be prudent for the bill to simply refer to Section 30-16-2.1 so that consistency in the definition can be maintained in the future. For example, legislation has been introduced this session that would amend the definition in 30-16-2.1.

POSSIBLE QUESTIONS

Are the security alert and blocking provisions necessary given that federal law already provides these protections? Would they be pre-empted by federal law?

EF/yr