



Synopsis of Original Bill

Senate Bill 448 enacts the Credit Report Security Act, providing consumers with the opportunity to place a security freeze on the consumer's credit report by making a request to a consumer reporting agency to refrain from releasing any part of the consumer's credit report or any information derived from the report without the express authorization of the consumer.

SB 448 requires the consumer reporting agency to place a security freeze on a consumer's credit report no later than 5 business days after receiving a request from the consumer. As of July 1, 2008, however, an agency must place a freeze on a report no later than 3 business days after receiving the request. As of July 1, 2009, an agency must place a freeze on a report no later than 1 business day after receiving the request.

SB 448 also provides that while a freeze is in effect, a consumer may authorize an agency to release the report to a specific person or to release the report for a specific period of time. The freeze shall remain in place until the consumer requests its removal. The agency must remove the freeze within 3 business days after receiving the request. Under the Act, if an agency releases information on a credit report while a freeze is in effect and without authorization, it must notify the consumer within 5 business days.

SB 448 provides that an agency may charge a consumer up to \$5 for the initial placement of a freeze but shall not charge a fee for the release of a credit report to a person, for the release of a credit report for a specific period of time or for the removal of the freeze, nor to a proven victim of identity theft. The bill allows an agency to provide information to a person with a current debtor-creditor relationship with the consumer, a person acting pursuant to a court order, warrant or subpoena, the Child Support Enforcement Division in order to carry out its statutory duties of establishing and collecting child support obligations, or a governmental agency acting to investigate fraud, to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory duties.

SB 448 also provides that whenever an agency is required to provide the consumer with a summary of rights under the federal Fair Credit Reporting Act, a specific notice of right to obtain a freeze must be included.

Finally, SB 448 provides for the bringing of a civil action by a consumer, in the event an agency releases information placed under a security freeze in violation of the act. The consumer may seek the following:

- 1) injunctive relief to prevent further violation of the security freeze;
- 2) any actual damages sustained as a result of a violation;
- 3) a civil penalty in an amount up to \$2,000 for each violation of the security freeze; and
- 4) costs of the action and reasonable attorney fees.

The effective date of the Act is July 1, 2007.

## **SIGNIFICANT ISSUES**

According to the AGO, there is no evidence/documentation requirement to establish oneself as one of the Sec. 3(L) exempt persons. On the face of the statute, nothing more than an oral statement is required.

While the bill imposes liability on and creates a civil cause of action against a CRA that wrongfully releases protected information, it does not create similar liability as against any person who wrongfully requests and obtains that information.

## **PERFORMANCE IMPLICATIONS**

The AODA suggests that if consumers take advantage of the provisions in the bill there would be a reduction in identity theft prosecutions.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to SB165, which provides enhanced consumer protection against identity theft and account fraud by permitting consumers to place a security freeze on their entire credit file maintained by consumer credit reporting agencies without having suffered actual harm from identity theft.

## **TECHNICAL ISSUES**

The AGO notes that Florida's credit freeze statute contains the following provisions, which may be appropriate additions:

"A third party requesting access to a consumer report on which a security freeze is in effect in connection with an application for credit or other permissible use may treat the application as incomplete if the consumer has not authorized a temporary lifting of the security freeze for the period of time during which the request is made." F.S.A. Sec. 501.005(9).

Sec. 5: A consumer may bring an action for the various types of relief, including attorney fees and costs. As written, it is not clear that fees and costs are a mandatory part of the relief to be granted to a prevailing consumer. AGO suggests that there be an amendment that tracks the Unfair Practices Act that says that the court shall award attorney fees and costs to prevailing plaintiff. As written, the court may decide that an award of fees and costs (which is generally not done in the U.S.) is not mandated.

## **OTHER SUBSTANTIVE ISSUES**

The AOC notes that SB 448 requires the consumer reporting agency to place a security freeze on a consumer's credit report no later than 5 business days after receiving a request from the consumer. As of July 1, 2008, however, an agency must place a freeze on a report no later than 3 business days after receiving the request. As of July 1, 2009, an agency must place a freeze on a report no later than 1 business day after receiving the request. Is this feasible?

**POSSIBLE QUESTIONS**

Is the 15 minute response period established by Sec. 3(E) after July 1, 2009, commercially practicable?

In Sec.3(G) there is a phased-in shorter time period for the CRA's action for implementing a security freeze and for a request to release info to a specific person (Sec. 3(E)). Why not so a similar phase-in of a shorter time period for notice of an improper release?

EO/sb:nt