

SUBJECT: Security freeze on a consumer reporting agency's consumer file

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Giddings, Elkins, Darby, Bailey, Bohac, Castro, Martinez
0 nays
2 absent — Solomons, Zedler

SENATE VOTE: On final passage, March 28 — 30-0, on Local and Uncontested Calendar

WITNESSES: For — Michael Dana, for David Kunkle, Chief of Police, Dallas Police Department; Rob Johnson, Consumer Data Industry Association (CDIA)

Against — Janis Cowman-Arteaga, Texas Association of Mortgage Brokers (TAMB)

BACKGROUND: Penal Code, sec. 32.51 establishes a state-jail felony (punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000) for obtaining, possessing, transferring, or using identifying information of another person without consent and with intent to harm or defraud another.

Business and Commerce Code, ch. 20 regulates consumer credit reporting agencies.

In 2003, the 78th Legislature enacted SB 473 by Ellis, which allows consumers to place a security alert or freeze on consumer files. On written request sent by certified mail that includes a copy of a valid police report or complaint of identity theft, a consumer credit reporting agency must place a security freeze on a consumer's file within five business days. The agency must disclose to the consumer the process of placing, removing, and temporarily lifting a security freeze. Within 10 days after receiving the request, the agency must send written confirmation to the consumer and provide the consumer with a unique identification number or password to be used to authorize removal or temporary lifting of the security freeze. If a consumer requests removal of the security freeze, the agency must do so within three business days. A consumer may ask that a freeze be lifted

temporarily for a designated period or for a properly identified requester, and the agency must do so within three business days. An agency must remove a security freeze if it was placed because of a material misrepresentation of fact by the consumer. The agency may not charge a fee for removal or temporary lifting of a security freeze.

DIGEST:

SB 222 would amend Business and Commerce Code, sec. 20.034(a) to delete a provision requiring that a request to a consumer credit reporting agency for a security freeze on a consumer file include a copy of a valid police or investigative report or complaint made under Penal Code, sec. 32.51.

The bill would allow a reasonable consumer charge for temporarily lifting a security freeze for a designated period or for an identified requester, or for removing a security freeze. The charge for placing a security freeze on a consumer file, temporarily lifting a security freeze for a designated period, or removing a security freeze could not exceed \$10 per request. The charge for temporarily lifting a security freeze for an identified requester could not exceed \$12 per request.

SB 222 would prohibit a consumer reporting agency from charging a fee for the placement, temporary lifting, or removal of a security freeze at the request of a consumer who submitted to the consumer reporting agency a copy of a valid police report, investigative report, or complaint involving the alleged commission of an offense under Penal Code, sec. 32.51.

Sec. 20.0237, regarding current procedures for removal or temporary lifting of a security freeze, would be repealed.

The bill would specify that the requirement to place a security alert or freeze on a consumer file did not apply to a consumer reporting agency that acted only to resell credit information by assembling and merging information in a database of another consumer reporting agency and did not maintain a permanent database of credit information for producing new credit reports.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007, and would apply to a request for placement, removal, or temporary lifting of a security freeze made on or after the effective date.

**SUPPORTERS
SAY:**

SB 222 would make requirements for requesting a security freeze on a credit bureau's consumer file less burdensome by removing the requirement to include a copy of a valid police or investigative report on identity theft when making the request. The bill would extend consumer protection as soon as it was needed – once consumers believed personal identifying information had been compromised, rather than after the fact once they were known victims.

Current law is effective in limited cases of identity theft, such as when a person has had checks stolen. However, recent reports of large security breaches with universities, government agencies, or multi-state retailers in which millions of Social Security numbers have been obtained by computer hackers have heightened the need for a change in the law. Once a thief has fraudulently secured a loan using someone else's identity, current law offers little protection other than trying to prevent a recurrence.

SB 222 would allow any consumer who believed the consumer's identifying information had been illegally obtained to place a security freeze on the consumer's credit file. By including a fee to place such a freeze, temporarily lift a freeze for a designated period, or remove a security freeze, the bill would thwart consumers from frivolously placing security freezes and would assure the ability of consumers to remove freezes for legitimate purposes.

Currently, Texas is one of six states that allow freezes of critical consumer information only for victims of identity theft, while 19 states have laws that allow a consumer, upon presentation of identification, to place a security freeze on the individual's credit report. Before the end of the year, most states will have such laws offering protection to any consumer. Texas should join other states and allow consumers to take swift action to protect financial information if they have reason to believe they could be subject to identity theft.

**OPPONENTS
SAY:**

It would be reasonable to continue the requirement of filing a police report or complaint of identity theft in order to place a consumer alert or freeze on a consumer file with a credit reporting bureau. Current law requires due diligence on the part of the consumer in order to acquire a security freeze on a credit report. Absent that, this bill could allow significantly more people to place consumer freezes, perhaps not for legitimate reasons.

More consumer freezes could lead to problems for mortgage lenders who need access to credit files for up to 180 days after an initial loan has closed. When a lender has a mortgage loan and the mortgagee's credit has been frozen, it can delay sale of the loan to a second lender. Even a delay of seven to 10 days, while waiting for a consumer to lift the freeze, can accrue significant interest and have an adverse effect on a small lender.

NOTES:

During the 2005 regular session, a similar bill, SB 100 by Ellis, passed the Senate, but died in the House Calendars Committee near the end of the session.