

- SUBJECT:** Establishing a security freeze on credit reports for minors
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 7 ayes — Oliveira, Bohac, Orr, E. Rodriguez, Villalba, Walle, Workman
0 nays
- WITNESSES:** For — Robert E. Johnson Jr., City of Houston; (*Registered, but did not testify*: Mary Calcote, Experian)
Against — None
- BACKGROUND:** Business and Commerce Code, sec. 20.01(3) defines a “consumer file” as all the information about a consumer that is recorded and retained by the consumer reporting agency. Sec. 20.01(4) defines “consumer report” as a report on a person’s creditworthiness, credit standing, debts, character, and other personal characteristics for the purposes of eligibility for credit or insurance.
- Sec. 20.01(8) defines “security freeze” as a notice placed on a consumer file that prohibits a consumer reporting agency from releasing a consumer report relating to the extension of credit without the consumer’s express authorization.
- Sec. 20.038(11), (12), and (13) exempts from a security freeze:
- a check service or fraud prevention service company that issues consumer reports to prevent or investigate fraud for purposes of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment;
 - a deposit account information service company that issues consumer reports related to account closures caused by fraud or similar negative information about the consumer to a financial institution for use in reviewing the consumer’s request for a deposit account; or
 - a consumer reporting agency that acts only to resell credit information and does not maintain a permanent database of credit information from which to produce new consumer reports.

DIGEST:

CSHB 1087 would establish procedures with respect to consumer credit for placing and removing a security freeze on the records of protected consumers and would set requirements governing the use of a protected consumer's record or report.

Placement and removal of security freeze. The bill would enable a protected consumer, defined as a Texas resident younger than 16 years of age at the time of a request, to ask a consumer reporting agency to place a security freeze on the protected consumer's file. A protected consumer's representative also could submit the request to the consumer reporting agency if he or she provided proof of identification, demonstrated proof of authority to act on behalf of the protected consumer, and paid a fee that could not exceed \$10. The fee would not apply if:

- the representative submitted a police report or other report demonstrating that the security freeze involved a crime of identity theft; or
- the consumer reporting agency already had a file on the protected consumer.

If the consumer reporting agency did not already have a file on the protected consumer, the agency would create a record for the protected consumer and place a security freeze on that record within 30 days of receiving the request. The bill would define "record" as a compilation of information created by a consumer reporting agency to identify a protected consumer solely for the purposes of placing a security freeze.

The freeze on the protected consumer's record or file would remain in effect until the consumer or representative requested its removal, or if the agency found the consumer or the representative materially had misrepresented facts in requesting the creation of a record or security freeze. Either the consumer or consumer's representative could request removal of the security freeze by submitting proof of identification and sufficient authority to make the request, and by paying the fee of \$10 or less. After receiving the request, the consumer reporting agency would have 30 days to remove the security freeze.

Use and release of records or reports. The bill would prohibit the agency from using the protected consumer's record to consider creditworthiness, credit standing, credit capacity, or other characteristics

of the consumer for purposes of eligibility for credit or insurance. While a security freeze was in effect, the bill would prohibit the release of a protected consumer's report, any information derived from the report, or any record created to protect the consumer.

CSHB 1087 would not apply to the use of a protected consumer's report or record by:

- a credit monitoring service subscribed to by the protected consumer or representative;
- a person providing a copy of the report to the protected consumer or representative at the request of the consumer or representative;
- a consumer reporting agency with respect to a database or file concerning information on criminal history, personal loss history, fraud prevention or detection, tenant screening, or employment screening; or
- a check service or fraud prevention service company, a deposit account information service company, or a consumer reporting agency that acts only to resell credit information described by Business and Commerce Code, sec. 20.038(11), (12), and (13).

CSHB 1087 would be the controlling legislation over any conflict with another section of the Business and Commerce Code, ch. 20 regarding a protected consumer. The exclusive remedy for violations under the bill would be a suit brought by the attorney general under Business and Commerce Code, sec. 20.11

The bill would take effect January 1, 2014.

**SUPPORTERS
SAY:**

CSHB 1087 would make Texas a pioneer in extending identity theft protection to its most vulnerable consumers — children under the age of 16. Only one other state, Maryland, has enacted a law enabling credit security freezes for minors. Identity theft hits children especially hard, as years may pass before the theft is detected, and the damage done may prove difficult to repair. The bill would enable parents or guardians to take measures against identity thieves who use the identifying information of minors to open up lines of credit. A parent would be able to request that an agency place a freeze on activity on a child's credit file if a file had already been opened or create a credit record and freeze it.

Not only would the bill help parents stop ongoing identity theft, it would

allow parents to take preventive measures against possible theft of their children's identities by requiring credit agencies to act quickly in placing a properly requested security freeze. The bill would enable credit reporting agencies to create and freeze a credit record, which would be different from a credit file in that it could not be used to establish a line of credit.

The protections in CSHB 1087 would apply only to consumers younger than 16 years old because older, minor consumers have legitimate needs for the use of credit, such as buying a car. The law enacted in Maryland, which established the upper age limit for a protected consumer at 16 years old, has been successful and would provide a good model for Texas to follow.

**OPPONENTS
SAY:**

The attorney general should not be the exclusive remedy for violations of CSHB 1087. As a first step, the bill should create an administrative remedy to require the compliance of credit reporting agencies.

**OTHER
OPPONENTS
SAY:**

By limiting protections to consumers under the age of 16, the bill would not go far enough to protect Texas minors. All children under age 18 are susceptible to identity theft. This group enjoys a number of other protections under law, and CSHB 1087's safeguards against identity theft should extend to them as well.

NOTES:

While HB 1087 as introduced and the committee substitute both generally concern the establishment of a consumer file security freeze for consumers under the age of 16, the bills have no precise provisions in common.

The companion, SB 60 by Nelson, was passed by the Senate on the local and uncontested calendar on March 13 and has been referred to the House Business and Industry Committee.