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FISCAL IMPACT REPORT

	ORIGINAL DATE 1/26/07		
SPONSOR <u>SJC</u>	LAST UPDATED <u>3/12/07</u>	HB _____	_____
			CS/165 & 448/aSFL 1,2,3
SHORT TITLE <u>Security Freeze on Credit Report</u>		SB _____	/aHBIC/aHJC
		ANALYST <u>Wilson</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)
Attorney General's Office (AGO)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to the Senate Judiciary Committee Substitute for Senate Bill 165 and Senate Bill 448 allows a consumer reporting agency may provide information to a prospective assignee of a financial obligation owing by the consumer in conjunction with the proposed purchase of the financial obligation.

Synopsis of HBIC Amendment

The House Business & Industry Committee amendment to the Senate Judiciary Committee Substitute for Senate Bill 165 and Senate Bill 448 removes the three Senate Floor amendments, but restores the language in several cases. The amendment also rewrites much of the language contained within the bill and the Senate Floor amendments.

The amendment states that a consumer may elect to place a security freeze on the consumer's credit report by making a request to a consumer reporting agency by means of certified or regular mail sent to an address designated by the consumer reporting agency or by telephone or a secure electronic method if such means are provided by the agency. A consumer shall provide any personal identification required by the consumer reporting agency and pay a fee, if applicable.

Within five business days of placing a security freeze on a consumer's credit report instead of the same day, a consumer reporting agency shall be required to send a written confirmation of the security freeze to the consumer and provide the consumer with a unique personal identification number, password or similar device to be used by the consumer when providing authorization for the release of the consumer's credit report to a specific person or for a specific period of time or for permanent removal of the freeze.

As of September 1, 2008, a consumer reporting agency that receives a request shall release a consumer's credit report as requested by the consumer within 15 minutes after the consumer's request is received by the consumer reporting agency through the use of a telephone or a secure electronic method provided by the agency, which may include the use of the internet, facsimile or other electronic means; provided that the consumer reporting agency is not required to release the credit report within 15 minutes unless the consumer's request is received by the consumer reporting agency between the hours of 6:00 a.m. and 9:30 p.m. mountain standard or mountain daylight time, as applicable, Sunday through Saturday.

According to the amendment a consumer reporting agency need not release a credit report within the time periods set forth above if the consumer fails to meet the above requirements or if the consumer reporting agency's ability to remove the security freeze within fifteen minutes is prevented by:

- A. an act of God, including fire, earthquake, hurricane, storm or similar natural disaster or phenomenon;
- B. unauthorized or illegal acts by a third party, including terrorism, sabotage, riots, vandalism, labor strikes or disputes disrupting operations or similar occurrences;
- C. operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failure inhibiting response time or similar disruption;
- D. governmental action, including emergency orders or regulations, judicial or law enforcement actions or similar directives;
- E. regularly scheduled maintenance of, or updates to, the consumer reporting agency's systems during other than normal business hours; or
- F. commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled...

The amendment allows a consumer reporting agency to charge a consumer no more than \$10 instead of the current \$5 in the bill for the initial placement of a security freeze. A consumer reporting agency may charge a fee of no more than \$5 instead of the current \$10 in the bill for the release of a credit report, upon which a security freeze has been placed, to a specific person or for a specific period of time. A consumer reporting agency may charge a fee of no more than \$5 for the removal of a security freeze. A fee shall not be charged to a consumer who is sixty-five years of age or older or to a victim of identity theft who provides a valid police or investigative report filed with a law enforcement agency alleging identity theft.

The amendment clarifies the debtor-creditor relationship by adding that a consumer reporting agency may release a consumer's credit report to a person or the person's subsidiary, affiliate, agent or assignee with which the consumer has or, prior to assignment, had an account, contract or debtor-creditor relationship for the purpose of reviewing the account or collecting the financial obligation owing for the account, contract or debt. As used in this paragraph,

"reviewing the account" includes activities related to account maintenance, monitoring, credit line increases and account upgrades and enhancements.

A consumer reporting agency may also release a consumer's credit report to a subsidiary, affiliate, agent, assignee or prospective assignee of a person to whom access has been granted by the consumer for the purpose of facilitating the extension of credit or other permissible uses, to a person or entity administering a credit file monitoring subscription service to which the consumer has subscribed or to a person or entity for the purpose of providing a consumer with a copy of the consumer's credit report upon the consumer's request.

The amendment adds that the following entities are not required to place a security freeze on credit reports:

- a consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer credit reporting agencies and does not maintain a permanent database of credit information from which new consumer credit reports are produced. However, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a consumer credit report by another consumer reporting agency;
- 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 methods of payment or
- a deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse or similar negative information regarding 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.

Synopsis of SFI #3

The Senate Floor Amendment #3 to the Senate Judiciary Committee substitute bill for Senate Bill 165 and Senate Bill 448 strikes all of Senate Floor amendment # 2 and adds as of September 1, 2008 a request to a consumer reporting agency from a consumer asking **to temporarily lift a freeze** on a credit report must be complied within 15 minutes of receiving the request by secure electronic mail, facsimile or telephone.

The amendment also adds the same 15 minute requirement with the same conditions if a consumer contacts a consumer reporting agency to **lift a freeze**.

Synopsis of SFI #2

The Senate Floor Amendment #2 to the Senate Judiciary Committee substitute bill for Senate Bill 165 and Senate Bill 448 requires a consumer reporting agency to **remove a security freeze** within three business days after receiving a request from a consumer who provides the unique personal identification number, password or similar device and proper identification and as of September 1, 2008, a consumer reporting agency must comply with the request within 15 minutes after the consumers request is received by the consumer reporting agency through the

use of a telephone during normal business hours, and the request includes the consumer's proper identification and unique personal identification number, password or similar device.

Synopsis of SFI #1

The Senate Floor Amendment #1 to the Senate Judiciary Committee substitute bill for Senate Bill 165 and Senate Bill 448 adds and clarifies that a consumer reporting agency that receives a request shall **release a consumer's credit report** as requested by the consumer within the following time periods:

- 1) three business days after the business day on which the consumer's written request to release the consumer's credit report is received by the consumer reporting agency or
- 2) on or after September 1, 2008, 15 minutes after the consumers request is received by the consumer reporting agency through a secure electronic method provided by the agency, or through the use of a telephone, during normal business hours, and the request includes the consumer's proper identification and unique personal identification number, password or similar device.

The amendment does not require a consumer reporting agency to **remove a security freeze** within the time periods cited above if the consumer fails to meet the requirements set forth in this amendment or if the consumer reporting agency's ability to remove the security freeze within 15 minutes is prevented by:

- (a) an act of God, including fire, earthquake, hurricane, storm or similar natural disaster or phenomenon;
- (b) unauthorized or illegal acts by a third party, including terrorism, sabotage, riots, vandalism, labor strikes or disputes disrupting operations or similar occurrence
- (c) operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failure inhibiting response time or similar disruption;
- (d) governmental action, including emergency orders or regulations, judicial or law enforcement actions or similar directives;
- (e) regularly scheduled maintenance of, or updates to, the consumer reporting agency's systems during other than normal business hours;
- (f) commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled; or
- (g) receipt of a removal request outside of normal business hours.

Synopsis of Original Bill

The Senate Judiciary Committee Substitute bill for Senate Bill 165 and 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.

The bill requires the consumer reporting agency to place a security freeze on a consumer's credit report no later than three business days after receiving a request from the consumer.

The bill also provides that while a freeze is in effect, a consumer may authorize a consumer reporting 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 three business days after receiving the request provided that no acts of God or vandalism by third parties prevent the consumer reporting agency from releasing the consumer's credit report. 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 who is less than 65 years old a fee of no more than \$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, a person for the purposes of prescreening as defined by the federal Fair Credit Reporting Act, a consumer reporting agency for its data base or files for certain information and for 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.

The bill 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 include.

Finally, the bill 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.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

Credit reporting agencies are governed by the Federal Fair Credit Reporting Act (FCRA) and therefore state laws governing credit reporting agencies are subject to possible preemption. However, state security freeze laws should not be preempted by FCRA. The federal law offers other consumer credit protection measures but does not address the issue of a security freeze.

Federal law requires credit bureaus upon the request of a consumer to:

- put a fraud alert into the consumer's file to warn potential users of the report that new credit should not be extended without first verifying the identity of the credit applicant;
- block the reporting of any information in a consumer's file that the consumer identifies as information resulting from an identity theft.

States are preempted from imposing requirements regarding the conduct required by these specific fraud alert and blocking provisions. These two provisions, however, do not establish any conduct with respect to freezing access to the entire report and therefore, security freeze laws should not be subject to federal preemption.

ADMINISTRATIVE IMPLICATIONS

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

OTHER SUBSTANTIVE ISSUES

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.

DW/mt:csd