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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/07

SPONSOR Rawson LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Credit Report Freezes SB 787

ANALYST Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB448 and SB165

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

Senate Bill 787 amends and enacts statutory provisions allowing consumers to place security alerts or security freezes on their credit reports and to have information in their credit reports blocked if their identities may have been used without their consent.

**Section 1:** amends Section 56-3-1 NMSA 1978 to define "identity theft" as "willfully obtaining, recording or transferring personal or financial information of another person without that person's authorization or consent."

**Section 2:** provides that a consumer may request that a credit bureau place a security alert in the consumer's credit report to warn anyone receiving information in the report that the consumer's identity may have been used without the consumer's consent. The request may be made by mail, telephone or in person. The alert shall be maintained for 90 days. The bill requires a recipient of a credit report containing a security alert to take reasonable steps to verify the consumer's identity prior to lending money, extending credit or completing the purchase, lease or rental of

goods or services. Under the bill, upon receiving a request for a security alert, a credit bureau shall provide notice to the consumer that the security alert may prevent or delay the approval of financial services.

**Section 3:** provides that a consumer may request the placement of a security freeze on the consumer's credit report that will prohibit a credit bureau from releasing information in the consumer's credit report without the consumer's express authorization. The request must be made in writing by certified mail. When a freeze is placed on a credit report, the credit bureau must provide the consumer with a personal ID number or password to use if the consumer chooses to remove the freeze or to authorize the release of the credit report to a specific person or for a specific period of time after the freeze is in place. A credit bureau shall authorize the release of the consumer's credit report within 3 business days of receiving the authorizing information. The bill provides that upon receiving a request for a security freeze, a credit bureau must provide notice to the consumer that using the security freeze may delay, interfere or prohibit the timely approval of financial services.

**Section 4:** provides that if a consumer alleges identity theft and provides to a credit bureau a copy of a valid police report describing the identity theft circumstances, information that the consumer lists as allegedly being the result of the theft shall be promptly blocked by the credit bureau so that it cannot be contained in a credit report. The information can only be unblocked under certain circumstances and only upon notification by the credit bureau to the consumer. A consumer providing a police report describing the identity theft circumstances has a right to receive from the credit bureau, free of charge and upon request, a copy of the consumer's credit report each month for up to 12 consecutive months.

## **SIGNIFICANT ISSUES**

According to the AGO, the bill states that the consumer "may request" placement of a security alert or freeze, not does not say specifically that the credit bureau is required to place them, although that certainly is implied.

The AGO further adds that SB 787 provides for placement of a security "alert," which the other two Senate credit security bills pending (SB 165 and SB 448) do not. However, the Fair and Accurate Credit Transaction Act of 2003, which significantly amends the Fair Credit Reporting Act, 15 USC 1681a *et seq.*, currently allows a consumer to place a fraud alert with a credit reporting agency. 15 USC 1681c-1(a) [§ 605A].

According to Consumers Union, 26 states have enacted some form of credit report security legislation (CA, CO, CT, DE, FL, HI, IL, KS, KY, LA, ME, MN, NC, NH, NJ, NV, NY, OK, PA, RI, SD, TX, UT, VT, WA, WI). SB 787's security freeze provisions (Section 3) are far less detailed and comprehensive than those in SB 165, SB 448, and the Model State Clean Credit and Identity Theft Protection Act, upon which the referenced Senate bills and most of the states' credit freeze bills are based. SB 787 does not provide for exemptions to the information freeze, which may violate some provisions of the Fair Credit Reporting Act, 15 USC 1681a *et seq.* (e.g., right to prescreen potential credit applicants for credit and insurance purposes, 15 USC 1681a(1), 1681b(c), 1681b(e), 1681m(d)). State laws relating to the creation and use of prescreened reports are preempted. 1681t(b)(1)(A), 1681b(c).

## **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

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

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.

## **OTHER SUBSTANTIVE ISSUES**

The AOC lists the following issues:

- 1) There is no requirement that the credit bureau place either a security freeze or security alert upon a credit report within a specified number of days.
- 2) There is no provision for notification to the consumer if a credit bureau releases information on a credit report while a freeze is in effect and without authorization.
- 3) There are no exceptions that allow a credit bureau to provide information to a person with a current debtor-creditor relationship with a consumer, a person acting pursuant to a court order, warrant or subpoena, the Child Support Enforcement Division, 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.
- 4) There is no provision for the bringing of a civil action by a consumer, in the event a bureau releases information placed under a security freeze, or does not place a security freeze or security alert upon a consumer's report, or does not block appropriate information from being released. Neither does the act contain penalties for such violations of the act.

EO/csd