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FISCAL IMPACT REPORT

SPONSOR	<u>HJC</u>	ORIGINAL DATE	<u>02/01/10</u>	
		LAST UPDATED	<u>02/15/10</u>	HB <u>131/HJCS</u>
SHORT TITLE	<u>Fair Credit Reporting and Identity Security Act</u>	SB	<u></u>	
		ANALYST	<u>Escudero</u>	

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From Original Bill

Attorney General Office (AGO)

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute for House Bill 131 expands to include on NMSA 1978, § 56-3A-2. “D: “declaration of removal” means “an identity theft report with a sworn affidavit”. DECLARATION OF REMOVAL –PROCUDURES.—Section A. (1) strikes “or inaccurate or false reporting and; (2) strikes “or inaccurate or false reporting and; (4) removes “such as a social security number”, to now read, “Discloses an identifying number by which the consumer may be identified by the consumer reporting agency”.

The House Judiciary Committee substitute for House Bill 131 strikes Section E. along with (1), (2), (3) and (4). Section F is rewritten to state the following: “A consumer reporting agency may restore the information that was the subject of a declaration of removal upon: (1) request of the affected consumer; or (2) a court order after the adjudication of the alleged debt in the judicial district in which the consumer resides”.

The House Judiciary Committee substitute for House Bill 131 NMSA 1978, § 56-3A-5, strikes “releases information” and is restated to say the following: “If a consumer reporting agency violates the provisions of the Fair Credit Reporting and Identity Security Act the affected consumer, then adds in “or the attorney general” may bring a civil action against the consumer reporting agency for: A. which remains the same, no changes and ; B. which adds the following, “of the Fair Credit Reporting Identity Security Act” and; C. which adds, “or each violation of the

provisions of the Subsection D of Section 3 of the 2010 Act;

FISCAL IMPLICATIONS

Absence of data makes it impossible to estimate whether the bill will have any fiscal impact, either positive or negative.

SIGNIFICANT ISSUES

Attorney General indicates on original bill as follows:

HB 131 new Subsection E is significant because it states that the affected consumer or the attorney general may bring a civil action against the consumer reporting agency for: injunctive relief; consumer's actual damages; \$2,000.00 civil money penalty and costs of the action and reasonable attorney fees. This section permits both the consumer and the attorney general to seek and obtain these remedies. This section does not appear to limit the consumer or the attorney general from seeking and attaining these remedies from the consumer reporting agency for the same conduct. Each could obtain the above relief for each of the same violation.

Under this subsection a consumer is permitted to seek a civil money penalty from the consumer reporting agency. As previously noted, the attorney general could also seek a civil money penalty. It is unclear, if the author meant to give both the consumer and the attorney general the right to bring a simultaneous action against the consumer reporting agency. If so, a consumer reporting agency faces multiple punishments for the same conduct by two distinct parties.

TECHNICAL ISSUES

Attorney General indicates, HB 131 new section 3(A) (3) does not define the phrase "conclusively valid designated address." And is silent as to what constitutes a "conclusively valid designated address." As such, the consumer may be free to designate an address so long as it is "conclusively valid."

PME/mt:mew