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FISCAL AND POLICY NOTE
First Reader

Senate Bill 270
Finance

(Senator Lee, *et al.*)

Consumer Protection - Credit Report Security Freezes - Prohibition on Fees and
Required Notices

This bill prohibits a consumer reporting agency from charging a fee for a placement, temporary lift, or removal of a security freeze or for the first two temporary lifts of a security freeze in a calendar year if the consumer has received a notice of a breach of the security system by a unit of State or local government or a business, under specified provisions of State law, or from (or on behalf of) a federal agency. To be eligible for the nonpayment of a fee, the consumer must provide a copy of the notice to the consumer reporting agency. A violation by a business of the notification content requirements established under the bill is an unfair and deceptive trade practice subject to enforcement under the provisions of the Maryland Consumer Protection Act (MCPA).

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances. Executive Branch State agencies can likely provide notice with existing resources. In addition, the Commissioner of Financial Regulation can handle additional complaints with existing resources. Likewise, if the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: The bill's imposition on businesses of existing penalty provisions does not have a material impact on local government finances or operations. Likewise, local governments can likely provide notice with existing resources.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: At any time that a consumer is entitled to receive a summary of rights under the federal Fair Credit Reporting Act or the Commercial Law Article, a consumer reporting agency must provide notice to the consumer with specified information, including the consumer's right to request a placement, temporary lift, or removal of a security freeze (as modified under the bill).

If a business determines that misuse of an individual's personal information has occurred or is reasonably likely to occur as a result of a security breach, the business must notify the individual of the breach and include information regarding the consumer's rights (as modified under the bill). A unit of the Executive Branch of State government as well as a unit of a local government must also provide the same notice under specified circumstances.

Current Law:

Security Freezes: State law defines a "security freeze" as a restriction placed on a consumer's consumer report at the request of the consumer that prohibits a consumer reporting agency from releasing the report (or any information derived from the report) without the authorization of the consumer. A consumer reporting agency may charge a reasonable fee (of up to \$5) for each placement, temporary lift, or removal of a security freeze. A consumer reporting agency may not charge a fee for a security freeze to a consumer who has obtained a report of alleged identity fraud or for a minor for whom a consumer report already exists.

State law also allows a protected consumer's representative to request a security freeze for an individual who is younger than age 16 at the time of request, or for an incapacitated person or a protected person for whom a guardian or conservator has been appointed. The Department of Human Resources is authorized by State law to request a security freeze for a child placed in foster care.

Any consumer who has reason to believe that a violation of a law regulating consumer credit reporting has occurred may file a complaint with the Commissioner of Financial Regulation. Upon receipt of the complaint, the commissioner may hold a hearing on the complaint, issue an order for compliance, and, if after a hearing the commissioner finds a pattern and practice of violation, issue cease and desist orders. If a consumer reporting agency ignores a cease and desist order or other order for compliance, the commissioner may impose a civil penalty of up to \$100 for each violation. Additionally, the commissioner may petition the circuit court of any county to aid in the enforcement of any of the aforementioned enforcement powers of the commissioner.

Maryland Consumer Protection Act: An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind, which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Background: A consumer report (sometimes called a credit report) contains key financial information about a consumer, including credit history, bill repayment history, and the status of the consumer's credit accounts. A consumer report includes detailed information about how often a consumer makes payments on time, how much credit is available to the consumer, and whether debt or bill collectors are collecting on money owed by the consumer. A lender uses information contained in the consumer report to determine whether to extend credit to a consumer and, if so, what interest rate to charge.

Many other types of companies also use consumer reports to make decisions about conducting business with consumers. For example, insurance companies, apartment rental companies, and utility companies often request a consumer report in order to decide whether to conduct business with a consumer. In some cases, prospective employers require applicants to release consumer report information as part of the hiring process.

A security freeze restricts access to a consumer report. Because most creditors need to see a consumer report before they will open a new account, they are unlikely to extend credit with a security freeze in place. Thus, a security freeze makes it more difficult for identity thieves to open new accounts in another person's name. Consumers with an active security freeze on their consumer reports must temporarily lift the freeze in order to allow third parties (e.g., a credit card company, mortgage lender, prospective employer, etc.) access to their reports.

A security freeze does not affect a consumer's credit score (a three-digit number calculated from information contained in a consumer report and a representation of a consumer's creditworthiness).

Additional Information

Prior Introductions: SB 665 of 2016 received an unfavorable report from the Senate Finance Committee. Its cross file, HB 782, passed the House and was referred to the Senate Finance Committee, but no further action was taken.

Cross File: HB 212 (Delegate Waldstreicher, *et al.*) - Economic Matters.

Information Source(s): Department of Labor, Licensing, and Regulation; Office of the Attorney General (Consumer Protection Division); Consumer Financial Protection Bureau; Federal Trade Commission; Department of Legislative Services

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