

SUBJECT: Allowing consumers to place a security alert or freeze on consumer files

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Giddings, Elkins, Kolkhorst, Bohac, Martinez Fischer, Solomons, Zedler

0 nays

2 absent — J. Moreno, Oliveira

SENATE VOTE: On final passage, March 26 — voice vote

WITNESSES: For — Scott Brecher; Dwain James, American Collectors Association of Texas; Rob Schneider, Consumers Union; Ronnie Wilson, Identity Theft Resource Center; (*Registered, but did not testify:*) MerryLynn Gerstenschlager, Texas Eagle Forum; Karen Neeley, Independent Bankers Association of Texas; Steve Thomas Solcick

Against — Keith A. Clifton, Tenant Tracker Inc.; Chuck Courtney, Texas Retailers Association; Joseph T. Fleming, Equifax; Jonathan Klein, Progressive County Mutual Insurance Co.; John McGee, Computer Sciences Corp.; Stuart Pratt, Consumer Data Industry Association; Michael J. Quaranta, Experian; (*Registered, but did not testify:*) Victor Gonzalez, Foley's

On — Jay Thompson, TALHI and Prudential; (*Registered, but did not testify:*) Don Hanson, National Association of Independent Insurers

BACKGROUND: Penal Code, sec. 32.51 makes it a state-jail felony (punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000) to obtain, possess, transfer, or use identifying information of another person without consent and with intent to harm or defraud another.

Business and Commerce Code, ch. 20 regulates credit consumer reporting agencies. Consumer file means all information about a consumer that is recorded and retained by a consumer reporting agency, regardless of how the information is stored. Consumer report means information by a consumer

reporting agency relating to the creditworthiness of a consumer that is used or expected to be used or is collected as a factor in establishing the consumer's eligibility for credit or insurance.

DIGEST: CSSB 473 would require a consumer reporting agency, in any written disclosure to a consumer, to include a statement explaining the consumer's rights, including:

- the process for receiving a consumer report or consumer file;
- the process for requesting or removing a security alert or freeze;
- the toll-free telephone number for requesting a security alert;
- applicable fees;
- dispute procedures;
- the process for correcting a consumer file or report; and
- information on a consumer's right to bring an action in court or to arbitrate a dispute.

The bill would give consumers the right to request a security alert or a security freeze on their consumer files. Security alert would mean a notice placed on a consumer file that alerts a recipient of a consumer report that the consumer's identity may have been used without the consumer's consent to obtain goods or services in the consumer's name fraudulently. Security freeze would mean 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.

A consumer reporting agency would have to place a security alert on a consumer's file within 24 hours of receiving the consumer's request to do so. The alert would have to remain in effect for at least 45 days. There could be no limit to the number of security alerts a consumer could request. At the end of a 45-day security alert, at the consumer's request, the agency would have to provide the consumer with a copy of the consumer's file. A consumer could include with the security alert request a telephone number to be used by people to verify the consumer's identity before entering into a transaction with the consumer. The agency would have to notify a person requesting a consumer report if a security alert were in effect and include a verification telephone number for the consumer if applicable. An agency would have to maintain a toll-free telephone number to accept security alert requests.

A person who received notification of a security alert in connection with a request for a consumer report for the approval of a credit-based application or for an application for a noncredit-related service could not lend money, extend credit, or authorize an application without taking reasonable steps to verify the consumer's identity. If a consumer had included with a security alert a telephone number to be used for identity verification, a person who received that number would have to take reasonable steps to contact the consumer using that number.

On written request sent by certified mail that included a copy of a valid police report or complaint of identity theft, an agency would have to place a security freeze on a consumer's file within five business days. The agency would have to disclose to the consumer the process of placing, removing, and temporarily lifting a security freeze. Within 10 days after receiving the request, the agency would have to send written confirmation to the consumer and provide him or her with a unique identification number or password to be used to authorize removal or temporary lifting of the security freeze. If a consumer requested removal of the security freeze, the agency would have to do so within three business days. A consumer could ask that a freeze be lifted temporarily for a designated period or for a properly identified requester, and the agency would have to do so within three business days. An agency would have to remove a security freeze if it was placed because of a material misrepresentation of fact by the consumer. The agency could not charge a fee for removal or temporary lifting of a security freeze.

If a security freeze were in place, an agency would have to notify the consumer in writing of a change in the file to the consumer's name, date of birth, social security number, or address within 30 days after the date of the change.

A security freeze would not apply to a consumer report provided to certain governmental and private agencies, including to:

- a state or local governmental entity, if the entity was acting under a court order or administrative subpoena;
- a child support agency acting to investigate or collect child-support payments, or the comptroller or a tax assessor-collector acting to investigate or collect delinquent taxes; and

- a check service or fraud prevention service company.

An agency could impose a reasonable charge for placing a security freeze on a consumer file, not to exceed \$8. However, the agency could not charge a fee for a consumer's request for a copy of the consumer's file made on the expiration of a 45-day security alert, for the toll-free telephone number used by consumers to request a security alert, or for a request for a security alert made by a consumer.

The bill would authorize the attorney general to file suit for injunctive relief to prevent a violation of these provisions or for a civil penalty not to exceed \$2,000 per violation. The attorney general could recover reasonable expenses, court costs, and attorney's fees. A violation of these provisions would be a false, misleading, or deceptive act for purposes of the Deceptive Trade Practices Act.

Social security numbers. CSSB 473 would prevent a person, other than a governmental entity, from:

- intentionally communicating or making available to the general public a person's social security number;
- displaying a person's social security number on a card or other device required to obtain a product or service;
- requiring a person to transmit a social security number over the Internet unless the connection was secure or the number was encrypted;
- requiring a person's social security number for access to an Internet website, unless a password or other authentication device also was required; and
- printing a person's social security number on any materials, other than a form or application, sent by mail, unless state or federal law required that the social security number be included.

This prohibition would not apply to the collection, use, or release of a social security number required by state or federal law; the use of a social security number for internal verification or administrative purposes; documents that are recorded or required to be open to the public under the open records law; or court records.

A person using another person's social security number before January 1, 2005, in a prohibited manner could continue that use if it was continuous and if the person provided annual disclosure to the other person informing him or her that, on written request, the person would cease to use the social security number in that manner. A person could not deny services to another person because of such a request.

The bill would take effect September 1, 2003, except that the provisions relating to the confidentiality of social security numbers would take effect January 1, 2005. The bill's provisions would continue in effect until September 1, 2005.

SUPPORTERS
SAY:

CSSB 473 would help curb identity theft, one of the fastest growing crimes in the United States. By 2002, Texas had risen to fifth among states in identity theft per capita, according to the Federal Trade Commission. Most Texans report that they are concerned about someone stealing their identity. The war on terrorism and the recent theft of 55,000 social security numbers at the University of Texas has made this issue a priority for the Legislature.

Consumer reporting agencies. The bill would empower victims of identity theft by giving them control over the flow of their credit information. It would require credit reporting agencies to inform consumers of their options for responding to identity theft and their right to control their credit information. Consumers could impose a security alert or a security freeze on their consumer files, depending on the level of perceived risk.

Security alerts have been proven effective in preventing identity theft. In California, a security breach exposed the personal identifying information of about 265,000 state employees, but thousands of employees were able to call credit bureaus to put fraud alerts on their credit files. Unfortunately, the effective date for the security freeze provisions came too late for consumers to block fraudulent lines of credit completely. The freeze acts as a "tourniquet," shutting down a thief's ability to open new lines of credit in the victim's name. A security alert also is an effective first line of defense against fraud, because it requires verification of the consumer's identity.

A security freeze only would prohibit a consumer reporting agency from releasing a consumer report relating to the extension of credit, so concerns

about helping criminals conceal their records are misplaced. Agencies could release information to employers regarding prospective employees' backgrounds regardless of whether or not a security freeze was in place.

While some consumer reporting agencies already use a security alert system, their use of alerts is inconsistent and ineffective. Some agencies that use these systems disregard the alert and release consumer information anyway. The bill would allow consumers to request an alert and would require creditors to verify their identity before extending credit, in a uniform fashion.

The bill would give consumers the flexibility to lift the credit freeze for a certain period or for a specific person. For example, if a consumer had set a freeze and was pursuing a home loan at the same time, he or she could lift the freeze temporarily to accomplish that transaction. A consumer who wished to refinance his or her home while the freeze was in effect could designate the lending officer as a person not subject to the freeze. Also, consumers could request that the freeze be removed if their case was resolved or if they found it to be an inconvenience. A freeze would not prevent a consumer from locking in an interest rate for a home loan. In fact, the ability to lift a freeze within three days would allow consumers to designate a period of time or requestor so that a mortgage loan could be made. Without CSSB 473, complications that arise due to identity theft could take a consumer weeks to sort out, causing the consumer to lose the opportunity to lock in an interest rate. A person who was the victim of identity theft would not be likely to forget to impose, lift, or remove a security freeze as necessary, and he or she would receive instructions from the agency on how to do so.

Concerns about consumers losing their personal identification numbers or having them stolen are misplaced. A consumer would not need to carry the number around with him or her and could keep it in a safe place. Also, a consumer could request a replacement number, and the agency would have to provide it within three business days.

The bill appropriately would authorize the attorney general to bring a suit for injunctive relief or a civil penalty to enforce the bill's provisions. Consumers who are victims of identity theft should not be expected to carry the entire strain and cost of pursuing civil claims alone.

Social security numbers. The social security number never was intended for widespread use or to serve as a national identity card. These numbers are far too easy for identity thieves to obtain. According to the U.S. General Accounting Office, between 1999 and 2001, allegations of social security number misuse and fraud ballooned by 64 percent. CSSB 473 would help protect consumers and reduce the risk of identity theft by restricting public availability of social security numbers. It would prohibit the public display or disclosure of social security numbers in certain specific ways, such as in mail, receipts, and on the Internet.

The bill would not prohibit private entities from using social security numbers but would affirm their right to do so for internal purposes. Also, it would not take effect for nearly two years, giving all affected entities time to comply. In this way, the bill would balance the privacy needs of consumers with the business needs of private corporations and organizations.

Private businesses have recognized that identity theft is a serious problem and that they could be liable for not protecting social security numbers, so they voluntarily are moving away from using them. It is unlikely that a company would challenge the law as a restriction on interstate commerce. If such a law were vulnerable to challenge, private firms already would have challenged a similar California law in effect since 2001. No such challenge has occurred.

The bill would not apply to the public sector because of the overwhelming cost of converting records. However, reducing the private sector's reliance on social security numbers would minimize the impact of identity theft.

OPPONENTS
SAY:

Consumer reporting agencies. CSSB 473 could have the unintended consequence of helping criminals conceal their history. Some consumer reporting agencies run background checks for employers and apartment owners, among other entities. Under this bill, a sexual predator could impose a security freeze on his or her consumer file, which would prevent prospective employers from obtaining that information.

Authorizing consumers to impose a security freeze on their files would take consumers down the wrong path. Shoppers who imposed a freeze would be inconvenienced later if they wanted to make a major purchase such as a car. Also, shoppers at retail stores could not obtain in-store credit because an

agency could take up to three days to lift a security freeze. Many consumers would forget to remove the freeze, which would deny them access to credit. Also, consumers would have to know ahead of time which consumer credit agency the lender used, and this information might not be readily available. Consumers might not even realize that credit reports are used for certain services, such as cellular phones, and might not lift the freeze in time to make the purchase. A freeze also could prevent a consumer from locking in an interest rate for a home loan. Ultimately, a security freeze would become so inconvenient that many consumers would terminate it altogether.

A security alert should be limited to the release of a consumer report relating to the extension of credit, like a security freeze. Otherwise, insurers would be brought within the scope of the bill, creating inconvenience for the public. For example, an insurance agent might not be able to give a consumer a real-time quote about an insurance rate if there were a security alert on the consumer's file, because the agent first would have to verify the consumer's identity.

CSSB 473 would have a harmful effect on Internet commerce. Consumers shopping online do not realize which credit reporting agencies are used by which lenders or even who the lenders are. Therefore, they would have a hard time knowing which agency to call to lift the freeze on their consumer files.

Providing a consumer with a unique personal identification number to be used to authorize a removal or temporary lifting of the security freeze would be ineffective. The consumer could lose the number or it could be stolen.

CSSB 473 is unnecessary. Consumer credit agencies already use effective security alert systems to protect consumers from identity theft.

Social security numbers. Both private companies and federal government units have been required to comply with a similar law in California. If CSSB 473 becomes law and is interpreted similarly, it could be found to violate constitutional restrictions against state interference with interstate commerce.

OTHER
OPPONENTS
SAY:

CSSB 473 would not go far enough. It should prohibit display or disclosure of social security numbers by the public sector, which also can lead to identity theft.

NOTES: The committee substitute changed the Senate engrossed version of SB 473 in several ways, including by:

- limiting a security freeze to a consumer report relating to the extension of credit involving that consumer file;
- setting the duration of a security freeze at a minimum 45 days, rather than 90 days;
- requiring an agency to maintain a toll-free telephone number that is answered at a minimum during normal business hours, rather than at all times, to accept security alert requests;
- requiring a written request for a security freeze to include a valid police report or complaint regarding identity theft;
- allowing a consumer to request a replacement personal identification number to lift or remove a security freeze;
- prohibiting an agency from charging a fee for removal or temporary lifting of a security freeze;
- adding to the list of exemptions from the security freeze;
- requiring a consumer reporting agency to honor a security freeze placed on a consumer file by another agency;
- providing that a person using another person's social security number before January 1, 2005, rather than 2004, could continue to use the number in certain circumstances;
- exempting from the provisions regarding confidentiality of social security numbers court records and documents subject to the open records law; and
- specifying that the provisions regarding confidentiality of social security numbers would take effect January 1, 2005, rather than 2004, and that the bill would continue in effect until September 1, 2005.

A related bill, HB 1053 by Hupp, which would make social security numbers confidential in certain circumstances, passed the House on May 5 and has been referred to the Senate State Affairs Committee.