

## **BILL ANALYSIS**

C.S.H.B. 1087  
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Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Recent reports indicate that identity theft continues to be a pervasive problem throughout Texas and that children and incapacitated adults often are the victims. Interested parties note that these more vulnerable populations are considered easy and desirable targets for identity theft because children and adult wards generally have clean or no credit records and present fewer impediments for criminals to create new accounts in the name of the child or adult ward. It also is reported that some children may not become aware of being a victim of identity theft until they apply to college, are hired for a job, open a bank account, buy a car, or rent an apartment, which often occurs after their credit that has been bad for an extended period of time, making reconciliation more difficult. C.S.H.B. 1087 seeks to remedy this situation by authorizing the placement of a security freeze on the consumer file or other record created or maintained by a consumer reporting agency regarding a person younger than 16 years of age.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1087 amends the Business & Commerce Code to prohibit a protected consumer's record from being created or used to consider the protected consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living for certain credit-related purposes. The bill defines "protected consumer" as an individual who resides in Texas and is younger than 16 years of age at the time a request for the placement of a security freeze on the consumer's record is made and defines "record," with respect to a protected consumer, as a compilation of information identifying a protected consumer created by a consumer reporting agency solely to comply with the bill's provisions.

C.S.H.B. 1087 requires a consumer reporting agency to place a security freeze on a protected consumer's consumer file if the agency receives a request from the protected consumer's representative for the placement of the security freeze and the representative submits the request to the agency at the address or other point of contact of and in the manner specified by the agency, provides sufficient proof of identification of the protected consumer and the representative and sufficient proof of authority to act on the protected consumer's behalf, and pays a fee to the agency. The bill requires the agency to create a record for the protected consumer and to place a security freeze on the record if the agency does not have a consumer file pertaining to the protected consumer upon receiving the request for the placement of a security freeze and if the requirements for placing such a freeze are met. The bill requires the agency to place the security freeze on the protected consumer's consumer file or record, as applicable, not later than the 30th day after receiving a request that meets the requirements for the placement of a security freeze.

C.S.H.B. 1087 prohibits a consumer reporting agency from releasing any consumer report

relating to the protected consumer, any information derived from the protected consumer's consumer report, or any record created for the protected consumer unless a security freeze on a protected consumer's consumer file or record is removed. The bill provides for the freeze to remain in effect until the protected consumer or the protected consumer's representative requests its removal or the agency removes the freeze because either the placement of the freeze or the creation of the record was based on a material misrepresentation of fact. The bill sets out conditions and procedures for removal of a freeze by a protected consumer or the protected consumer's representative. The bill authorizes an agency to charge a reasonable fee of up to \$10 for each placement or removal of a freeze except under certain circumstances. The bill establishes that the exclusive remedy for a violation of the bill's provisions is a suit filed by the attorney general.

C.S.H.B. 1087 exempts from its provisions the use of a protected consumer's consumer report or record by certain persons and entities and establishes that the bill's provisions control to the extent of a conflict between a provision of the bill relating to a security freeze on a protected consumer's record and another statutory provision relating to the regulation of consumer credit reporting agencies. The bill establishes that documentation that shows a person has authority to act on a protected consumer's behalf is considered sufficient proof of authority for purposes of the bill's provisions and that information or documentation that identifies a protected consumer or a protected consumer's representative is considered sufficient proof of identity for such purposes.

### **EFFECTIVE DATE**

January 1, 2014.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1087 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### **INTRODUCED**

SECTION 1. Chapter 20, Business & Commerce Code, is amended by adding Section 20.025 to read as follows:

Sec. 20.025. CONSUMER FILE FOR CHILD OR ADULT WARD; AUTHORITY OF PARENT OR GUARDIAN. (a) In this section:

(1) "Guardian," with respect to a child, means:

(A) a managing or possessory conservator of the child who is not the child's parent; or

(B) a guardian of the person or estate, or both, of the child.

(2) "Guardian," with respect to a ward, means a guardian of the person or estate, or both, of the ward.

(3) "Parent" means a natural or adoptive parent. The term does not include a parent whose parental rights have been terminated.

#### **HOUSE COMMITTEE SUBSTITUTE**

**No equivalent provision.**

(4) "Ward" means an incapacitated person for whom a guardian is appointed by a court. The term does not include a person who must have a guardian appointed for the person to receive funds due the person from a governmental source.

(b) A parent of a child younger than 16 years of age or the guardian of a ward who is 18 years of age or older may request a consumer reporting agency to establish a consumer file for the child or ward.

(c) On the request of a parent or a guardian who provides proof of authority required by Subsection (d) or a guardian who provides proof of authority required by Subsection (e), a consumer reporting agency shall establish and maintain a consumer file for the child or ward and shall recognize the authority of the parent or guardian to act on the child's or ward's behalf as provided by this section.

(d) For a parent, a certified copy of the child's birth certificate or, for a guardian, a copy of a court order documenting that the guardian is the managing or possessory conservator or guardian of the child, presented together with a copy of a government-issued identification issued to the parent or guardian, is acceptable proof of authority for purposes of Subsection (c) and is considered "proper identification" for purposes of any provision of this chapter, including Sections 20.031 and 20.034.

(e) A copy of the court order appointing the guardian for the ward, presented together with a copy of a government-issued identification issued to the guardian, is acceptable proof of authority for purposes of Subsection (c) and is considered "proper identification" for purposes of any provision of this chapter, including Sections 20.031 and 20.034.

(f) A parent of a child younger than 16 years of age or a guardian of a ward for whom a consumer file is established under this section has the same authority to act on the child's or ward's behalf with respect to the child's or ward's consumer file as a consumer has to act

on the consumer's own behalf under this chapter, including the authority to request the placement or removal of a security alert or a security freeze.

(g) A charge imposed on a consumer under Section 20.04 is imposed on the parent of a child or guardian of a ward for whom a consumer file is established under this section.

(h) A consumer reporting agency may not recognize the authority of an alleged parent or guardian to act on a child's or ward's behalf if the agency receives proof that a court has terminated the relationship under which the alleged parent or guardian assumes authority to act under this section.

SECTION 2. Section 20.037, Business & Commerce Code, is amended by adding Subsection (e) to read as follows:

(e) A consumer reporting agency shall, on the child's 16th birthday, remove a security freeze placed on the consumer file of a child established under Section 20.025 and shall notify both the parent and child in writing at least 30 days before removing the security freeze under this subsection.

No equivalent provision.

No equivalent provision.

SECTION 1. Chapter 20, Business & Commerce Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. SECURITY FREEZE FOR CHILD

Sec. 20.21. DEFINITIONS. In this subchapter:

(1) "Protected consumer" means an individual who resides in this state and is younger than 16 years of age at the time a request for the placement of a security freeze is made.

(2) "Record," with respect to a protected consumer, means a compilation of information identifying a protected consumer created by a consumer reporting agency solely to comply with this subchapter.

(3) "Representative" means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

(4) "Security freeze," with respect to a protected consumer, means:

(A) if a consumer reporting agency does not have a consumer file pertaining to the protected

consumer, a restriction that:

(i) is placed on the protected consumer's record in accordance with this subchapter; and

(ii) prohibits a consumer reporting agency from releasing a consumer report relating to the extension of credit involving the consumer's record without the express authorization of the consumer's representative or the consumer, as applicable; or

(B) if a consumer reporting agency has a consumer file pertaining to the protected consumer, a restriction that:

(i) is placed on the protected consumer's consumer report in accordance with this subchapter; and

(ii) except as otherwise provided by this subchapter, prohibits a consumer reporting agency from releasing the protected consumer's consumer report relating to the extension of credit involving that consumer file, or any information derived from the protected consumer's consumer report.

Sec. 20.22. APPLICABILITY; CONFLICT OF LAW. (a) This subchapter does not apply to the use of a protected consumer's consumer report or record by:

(1) a person administering a credit file monitoring subscription service to which:

(A) the protected consumer has subscribed; or

(B) the representative of the protected consumer has subscribed on behalf of the protected consumer;

(2) a person providing the protected consumer or the protected consumer's representative with a copy of the protected consumer's consumer report on request of the protected consumer or the protected consumer's representative;

(3) a consumer reporting agency with respect to a database or file that consists entirely of information concerning, and is used solely for, one or more of the following:

(A) criminal history record information;

(B) personal loss history information;

(C) fraud prevention or detection;

(D) tenant screening; or

(E) employment screening; or

(4) an entity described by Section 20.038(11), (12), or (13).

(b) To the extent of a conflict between a provision of this subchapter relating to a protected consumer and another provision of this chapter, this subchapter controls.

Sec. 20.23. PROOF OF AUTHORITY AND IDENTIFICATION. (a) Documentation that shows a person has authority to act on behalf of

a protected consumer is considered sufficient proof of authority for purposes of this subchapter, including:

(1) an order issued by a court; or

(2) a written, notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected consumer.

(b) Information or documentation that identifies a protected consumer or a representative of a protected consumer is considered sufficient proof of identity for purposes of this subchapter, including:

(1) a social security number or a copy of the social security card issued by the United States Social Security Administration;

(2) a certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate;

(3) a copy of a driver's license or identification card issued by the Department of Public Safety;  
or

(4) any other government-issued identification.

Sec. 20.24. USE OF RECORD TO CONSIDER CREDITWORTHINESS OR FOR OTHER PURPOSES PROHIBITED. A protected consumer's record may not be created or used to consider the protected consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living for any purpose described by Section 20.01(4).

Sec. 20.25. REQUEST TO PLACE A SECURITY FREEZE; CREATION OF RECORD. (a) Except as provided by Subsection (b), a consumer reporting agency shall place a security freeze on a protected consumer's consumer file if:

(1) the consumer reporting agency receives a request from the protected consumer's representative for the placement of the security freeze as provided by this section; and

(2) the protected consumer's representative:

(A) submits the request to the consumer reporting agency at the address or other point of contact of and in the manner specified by the consumer reporting agency;

(B) provides to the consumer reporting agency sufficient proof of identification of the protected consumer and the representative;

(C) provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer; and

(D) pays to the consumer reporting agency a fee as provided by Section 20.29.

(b) If a consumer reporting agency does not have a consumer file pertaining to a protected consumer when the consumer reporting agency receives a request under Subsection (a) and if the requirements of Subsection (a) are met, the consumer reporting agency shall create a record for the protected consumer and place a security freeze on the protected consumer's record.

(c) The consumer reporting agency shall place the security freeze on the protected consumer's consumer file or record, as applicable, not later than the 30th day after receiving a request that meets the requirements of Subsection (a).

Sec. 20.26. RELEASE OF CONSUMER REPORT PROHIBITED. Unless a security freeze on a protected consumer's consumer file or record is removed under Section 20.28 or 20.30, a consumer reporting agency may not release any consumer report relating to the protected consumer, any information derived from the protected consumer's consumer report, or any record created for the protected consumer.

Sec. 20.27. PERIOD OF SECURITY FREEZE. A security freeze on a protected consumer's consumer file or record remains in effect until:

(1) the protected consumer or the protected consumer's representative requests that the consumer reporting agency remove the security freeze in accordance with Section 20.28; or

(2) a consumer reporting agency removes the security freeze under Section 20.30.

Sec. 20.28. REMOVAL OF SECURITY FREEZE. (a) A protected consumer or a protected consumer's representative may remove a security freeze on a protected consumer's consumer file or record if the protected consumer or representative:

(1) submits a request for the removal of the security freeze to the consumer reporting agency at the address or other point of contact of and in the manner specified by the consumer reporting agency;

(2) provides to the consumer reporting agency:

(A) in the case of a request by the protected consumer:

(i) sufficient proof of identification of the protected consumer; and

(ii) proof that the sufficient proof of authority for the protected consumer's representative to act on behalf of the protected consumer is no longer valid; or

(B) in the case of a request by the representative of a protected consumer:

(i) sufficient proof of identification of the

protected consumer and the representative; and  
(ii) sufficient proof of authority to act on behalf  
of the protected consumer; and  
(3) pays to the consumer reporting agency a fee  
as provided by Section 20.29.

(b) The consumer reporting agency shall  
remove the security freeze on the protected  
consumer's consumer file or record not later  
than the 30th day after the date the agency  
receives a request that meets the requirements of  
Subsection (a).

Sec. 20.29. FEES. (a) A consumer reporting  
agency may not charge a fee for any service  
performed under this subchapter other than a fee  
authorized by this section.

(b) Except as provided by Subsection (c), a  
consumer reporting agency may charge a  
reasonable fee in an amount not to exceed \$10  
for each placement or removal of a security  
freeze on the protected consumer's consumer  
file or record.

(c) A consumer reporting agency may not  
charge a fee for the placement of a security  
freeze under this subchapter if:

(1) the protected consumer's representative  
submits to the consumer reporting agency a  
copy of a valid police report, investigative  
report, or complaint involving the commission  
of an offense under Section 32.51, Penal Code;  
or

(2) at the time the protected consumer's  
representative makes the request for a security  
freeze:

(A) the protected consumer is under the age of  
16; and

(B) the consumer reporting agency has created  
a consumer report pertaining to the protected  
consumer.

Sec. 20.30. EFFECT OF MATERIAL  
MISREPRESENTATION OF FACT. A  
consumer reporting agency may remove a  
security freeze on a protected consumer's  
consumer file or record, or delete a record of a  
protected consumer, if the security freeze was  
placed or the record was created based on a  
material misrepresentation of fact by the  
protected consumer or the protected consumer's  
representative.

Sec. 20.31. REMEDY FOR VIOLATION.  
Notwithstanding Subchapter D or any other law,  
the exclusive remedy for a violation of this  
subchapter is a suit filed by the attorney general  
under Section 20.11.



No equivalent provision.

SECTION 2. Sections 20.01, 20.02, 20.021, and 20.03, Business & Commerce Code, are designated as Subchapter A, Chapter 20, Business & Commerce Code, and a heading is added to that subchapter to read as follows:  
SUBCHAPTER A. GENERAL REQUIREMENTS

No equivalent provision.

SECTION 3. Sections 20.031, 20.032, 20.033, 20.034, 20.035, 20.036, 20.037, 20.038, 20.0385, and 20.039, Business & Commerce Code, are designated as Subchapter B, Chapter 20, Business & Commerce Code, and a heading is added to that subchapter to read as follows:  
SUBCHAPTER B. SECURITY ALERT AND SECURITY FREEZE

No equivalent provision.

SECTION 4. Sections 20.04, 20.05, 20.06, and 20.07, Business & Commerce Code, are designated as Subchapter C, Chapter 20, Business & Commerce Code, and a heading is added to that subchapter to read as follows:  
SUBCHAPTER C. RESTRICTIONS ON AND AUTHORITY OF CONSUMERS AND CONSUMER REPORTING AGENCIES

No equivalent provision.

SECTION 5. Sections 20.08, 20.09, 20.10, 20.11, 20.12, and 20.13, Business & Commerce Code, are designated as Subchapter D, Chapter 20, Business & Commerce Code, and a heading is added to that subchapter to read as follows:  
SUBCHAPTER D. ENFORCEMENT

SECTION 3. This Act takes effect September 1, 2013.

SECTION 6. This Act takes effect January 1, 2014.