

BILL ANALYSIS

S.B. 60
By: Nelson
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, credit consumers may place freezes on their credit file to prevent identity thieves from opening lines of credit in their name. Because most children have not established a credit file, they are particularly susceptible to tarnished credit histories if their identity is stolen.

S.B. 60 amends current law relating to 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 under 16 years of age.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Chapter 20, Business & Commerce Code, by adding Subchapter E, as follows:

SUBCHAPTER E. SECURITY FREEZE FOR CHILD

Sec. 20.21. DEFINITIONS. Defines "protected consumer," "record," "representative," and "security freeze" in this subchapter.

Sec. 20.22. APPLICABILITY; CONFLICT OF LAW. (a) Provides that 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 the protected consumer has subscribed, or 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) (relating to a check service or fraud prevention service company that issues consumer reports to prevent or investigate fraud or to approve or process certain methods of payment), (12) (relating to a deposit account information service company that issues consumer reports related to account closures caused by certain negative consumer information to an inquiring financial institution), or (13) (relating to a consumer reporting agency that acts only to resell credit information and does not maintain a permanent database of credit information from which new consumer reports are produced).

(b) Provides that, 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) Provides that 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) Provides that information or documentation that identifies a protected consumer or representative of a protected consumer is considered sufficient proof of identity for purposes of this subchapter, including certain forms of identification.

Sec. 20.24. USE OF RECORD TO CONSIDER CREDITWORTHINESS OR FOR OTHER PURPOSES PROHIBITED. Prohibits 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 any purpose described by Section 20.01(4) (relating to defining consumer report).

Sec. 20.25. REQUEST TO PLACE A SECURITY FREEZE; CREATION OF RECORD. (a) Requires a consumer reporting agency, except as provided by Subsection (b), to 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 according to certain procedure;

(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) Requires the consumer reporting agency, 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, to create a record for the protected consumer and place a security freeze on the protected consumer's record.

(c) Requires the consumer reporting 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 of Subsection (a).

Sec. 20.26. **RELEASE OF CONSUMER REPORT PROHIBITED.** Prohibits a consumer reporting agency, unless a security freeze on a protected consumer's consumer file or record is removed under Section 20.28 or 20.30, from releasing any consumer report relating to the protected consumer, and information derived from the protected consumer's consumer report, or any record created for the protected consumer.

Sec. 20.27. **PERIOD OF SECURITY FREEZE.** Provides that 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) Authorizes a protected consumer or protected consumer's representative to 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 according to certain procedure;

(2) provides to the consumer reporting agency:

(A) in the case of a request by the protected consumer, sufficient proof of identification of the protected consumer, and proof that the sufficient proof of authority for the protected consumer's representative is no longer valid; or

(B) in the case of a request by the representative of a protected consumer, sufficient proof of identification of the protected consumer and the representative, and 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) Requires the consumer reporting agency to 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) Prohibits a consumer reporting agency from charging a fee for any service performed under this subchapter other than a fee authorized by this section.

(b) Authorizes a consumer reporting agency, except as provided by Subsection (c), to 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) Prohibits a consumer reporting agency from charging 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 (Fraudulent Use or Possession of Identifying Information), Penal Code; or

(2) at the time the protected consumer's representative makes the request for a security freeze, the protected consumer is under the age of 16, and the consumer reporting agency has created a consumer report pertaining to the protected consumer.

Sec. 20.30. EFFECT OF MATERIAL MISREPRESENTATION OF FACT. Authorizes a consumer reporting agency to 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. Provides that the exclusive remedy for a violation of this subchapter, notwithstanding Subchapter D or any other law, is a suit filed by the attorney general under Section 20.11 (Injunctive Relief; Civil Penalty).

SECTION 2. Designates Sections 20.01, 20.02, 20.021, and 20.03, Business & Commerce Code, as Subchapter A, Chapter 20, Business & Commerce Code, and adds a heading to that subchapter to read as follows:

SUBCHAPTER A. GENERAL REQUIREMENTS

SECTION 3. Designates 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, as Subchapter B, Chapter 20, Business & Commerce Code, and adds a heading to that subchapter to read as follows:

SUBCHAPTER B. SECURITY ALERT AND SECURITY FREEZE

SECTION 4. Designates Sections 20.04, 20.05, 20.06, and 20.07, Business & Commerce Code, as Subchapter C, Chapter 20, Business & Commerce Code, and adds a heading to that subchapter to read as follows:

SUBCHAPTER C. RESTRICTIONS ON AND AUTHORITY OF CONSUMERS AND CONSUMER REPORTING AGENCIES

SECTION 5. Designates Sections 20.08, 20.09, 20.10, 20.11, 20.12, and 20.13, Business & Commerce Code, as Subchapter D, Chapter 20, Business & Commerce Code, and adds a heading to that subchapter to read as follows:

SUBCHAPTER D. ENFORCEMENT

SECTION 6. Effective date: January 1, 2014.

EFFECTIVE DATE

January 1, 2014.