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BILL ANALYSIS

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Senate Bill 75 (as introduced 1-25-07)  
Sponsor: Senator Gilda Z. Jacobs  
Committee: Banking and Financial Institutions

Date Completed: 3-14-07

## **CONTENT**

**The bill would create the "Consumer Security Act of 2007" to do the following:**

- **Allow a consumer to place a security freeze on his or her consumer file by making a written request to a consumer reporting agency.**
- **Prohibit a consumer reporting agency from releasing information from a consumer file to a third party if a freeze were in place, without the consumer's authorization.**
- **Require a consumer reporting agency to notify a person requesting a consumer report if a freeze were in effect.**
- **Permit a consumer to allow access to his or her consumer file to a specific person or for a specific period of time while a freeze was in place.**
- **Allow a consumer reporting agency to charge a fee for placing a freeze on a consumer file or allowing limited access to a file.**
- **Establish deadlines for a consumer reporting agency to comply with the proposed requirements.**
- **Allow a consumer to bring an action for an agency's violation of the proposed Act.**

"Consumer" would mean an individual who resides in this State. "Consumer file" would mean all of the information on a consumer recorded and retained by a consumer reporting agency regardless of how the information is stored. "Consumer reporting agency" would mean any person who, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

"Consumer report" would mean any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for any of the following:

- Credit or insurance to be used primarily for personal, family, or household purposes.
- Employment purposes.
- Any other purpose authorized under Section 604 of the Federal Fair Credit Reporting Act (described below).

"Security freeze" would mean a notice that is placed on a consumer report or consumer file at the request of the consumer and that prohibits a consumer reporting agency from

releasing the consumer's consumer report, any information from it, or the consumer's credit score, without the express authorization of the consumer except in compliance with the proposed Act.

Specifically, a consumer could place a security freeze on his or her consumer file by making a written request to a consumer reporting agency. The request would have to include clear and proper identification of the consumer (information generally deemed sufficient to identify an individual). The consumer reporting agency would have to place a security freeze on the consumer file within five business days after receiving the written request. ("Written request" would mean either a request made in writing sent by certified mail, overnight mail, or ordinary mail to a consumer reporting agency; or a direct request to a consumer reporting agency through a secure electronic connection, if the agency provides such a connection.)

If a security freeze were in place, a consumer reporting agency could not release information from a consumer file to a third party without prior express authorization from the consumer. This provision would not prevent a consumer reporting agency from advising a third party that a security freeze was in effect with respect to the consumer file.

Within five business days after a consumer reporting agency placed a security freeze on a consumer file, the agency would have to send a written confirmation of the freeze to the consumer. The confirmation would have to include a unique personal identification number or password that the consumer could use to authorize the release of his or her consumer report, consumer file, or credit information to a specific person or for a specific period of time. Simultaneously, the agency would have to give the consumer in writing the process for placing, removing, and temporarily lifting a security freeze and the process for allowing access to information in the file while the freeze was in effect.

A consumer could request in writing a replacement personal identification number or password. The request would have to comply with the requirements for requesting a security freeze. Within five business days after a consumer reporting agency received a request for a replacement, the agency would have to give the consumer with a new, unique personal ID number or password.

A consumer reporting agency would have to notify a person who requested a consumer report if a security freeze were in effect for the consumer file involved in the report.

If a consumer wished to allow access to his or her consumer file to a specific person or for a specific period of time while a security freeze was in place, he or she would have to contact the consumer reporting agency, request that it allow access to the file, and provide all of the following to the agency:

- Clear and proper identification.
- The unique personal ID number or password provided by the agency.
- Information sufficient to identify the person who was to receive information from the consumer file or a consumer report or the specific time period that the agency should allow users access to the consumer file.

An agency that received a request from a consumer to lift a security freeze temporarily would have to comply with the request within three days after receiving it. An agency could develop procedures involving use of the telephone, facsimile, the internet, or other electronic media to receive and process a request from a consumer to lift a freeze temporarily in an expedited manner.

A security freeze would have to remain in place until the consumer requested that the agency remove it. The agency would have to remove the security freeze within three

business days after receiving the request, clear and proper identification, and the unique personal ID number or password provided by the agency.

A consumer reporting agency could impose a reasonable fee, not to exceed \$10, on a consumer for initially placing a security freeze on a consumer file. An agency also could impose a reasonable fee, not to exceed \$8 per request, on a consumer for a request to allow limited access to a consumer file. A consumer agency could not charge a consumer a fee for removing a security freeze.

A consumer damaged by an intentional or negligent violation of the proposed Act by a consumer reporting agency could bring an action for that violation and would be entitled to recover his or her actual damages, plus reasonable attorney fees and court costs.

(Section 604 of the Fair Credit Reporting Act prescribes permissible purposes of consumer reports. In general, a consumer reporting agency may furnish a consumer report under the following circumstances:

- In response to a court order or a Federal grand jury subpoena.
- According to the written instructions of the consumer.
- In response to a request by the head of a state or local child support enforcement agency, if certain conditions are met.
- To an agency administering a state plan for child or spousal support, to set an initial or modified child support award.

A consumer reporting agency also may furnish a consumer report to a person whom the agency has reason to believe intends to use the information as follows:

- In connection with a credit transaction involving the consumer and the extension of credit to, or review or collection of an account of, the consumer.
- For employment purposes (subject to specific conditions).
- In connection with the underwriting of insurance involving the consumer.
- In connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider the applicant's financial responsibility or status.
- As a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation.

In addition, a consumer reporting agency may furnish a consumer report to a person whom the agency has reason to believe otherwise has a legitimate business need for the information in connection with a business transaction initiated by the consumer, or to review an account to determine whether the consumer continues to meet the terms of the account.)

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bill would have a minimal fiscal impact on State and local government. To the extent that there would be an increase in civil actions as a result of this bill, the courts could incur increased costs, but these would be absorbed by the existing court system.

Fiscal Analyst: Stephanie Yu

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.