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Bill Analysis
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(As Introduced)

Sens. Niehaus, Clancy, Goodman, Smith, Cafaro, Schuring, Faber, Padgett, Mumper, Harris

BILL SUMMARY

- Permits a consumer to request a consumer reporting agency to place a security freeze on the consumer's credit report.
- Creates procedures for requesting a security freeze to a consumer reporting agency and for the actions of the consumer reporting agency in response to that request.
- Provides a procedure for a consumer to release the consumer's credit report subject to a security freeze to a specific person or to lift the security freeze for a limited period of time.
- Establishes a list of entities to whom a consumer reporting agency may release a consumer credit report on which a security freeze has been placed.
- Specifies the entities that are not required to place a security freeze on a consumer's credit report.
- Permits the Attorney General to conduct an investigation of a consumer reporting agency if the Attorney General has reason to believe that the consumer reporting agency has failed or is failing to comply with the provisions of the bill.
- Specifies the requirements regarding persons who are subpoenaed to produce relevant matter in the course of the Attorney General's investigation of a consumer reporting agency.
- Allows the Attorney General to bring a civil action if it appears that a consumer reporting agency has failed or is failing to comply with the

provisions of the bill and, if there is a finding that the consumer reporting agency intentionally or recklessly failed to comply, requires the court to impose a civil penalty ranging from \$1,000 to \$10,000, depending on the circumstances.

- Provides that "personal information" is not a public record and defines personal information as a social security number, driver's license or state identification card number, and account number or credit or debit card number linked to any code or password that would permit access to a financial account.
- Prohibits a public office or person responsible for public records from making available for public inspection or copying any public record that contains any personal information until that information is redacted from the public record and requires the public office or person responsible for public records to notify the requestor of any redaction of information or make the redaction plainly visible.
- Prohibits a public office, or person responsible for a public office's public records, that decides to make electronic copies of any document or other record of the public office available online to the public through the internet from doing so without first redacting from that record any personal information or information declared to be confidential.
- Provides that a person's social security number is confidential.
- Provides that the statute of limitations for a cause of action on the grounds of identity fraud under the bill is five years.
- Provides that if the period of limitation for a felony, misdemeanor, or minor misdemeanor or for a prosecution of a certain specified offense has expired, prosecution for identity fraud must be commenced within five years after the discovery of the offense.
- Requires the Attorney General to cooperate with and provide technical assistance to any local law enforcement agency in the state, upon that agency's request, with respect to the enforcement of identity fraud crimes.



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CONTENT AND OPERATION

Security freezes

Consumer's credit report security freeze

The bill permits a consumer to place a "security freeze" (see Definitions," below) on the consumer's credit report by making a request to a "consumer reporting agency" (see Definitions," below) in writing by certified mail, or by making the request directly to the consumer reporting agency through a secure electronic mail connection, if an electronic mail connection is provided by the consumer reporting agency. Under the bill, a consumer reporting agency must place a security freeze on a consumer report not later than five business days after receiving a request as described above. The consumer reporting agency must send a written confirmation of the security freeze to the consumer within five business days of placing the freeze and, at the same time, must provide the consumer with a unique personal identification number or password, which cannot be the consumer's social security number. (R.C. 1349.52(B) and (C).)

Temporary removal of security freeze

A consumer may allow the consumer's credit report to be accessed for a specific party or period of time while a freeze is in place by contacting the consumer reporting agency by certified mail or secure electronic mail and requesting that the freeze be temporarily lifted and providing all of the following (R.C. 1349.52(D)):

- (1) Information generally considered sufficient to identify the consumer;
- (2) The unique personal identification number or password provided by the consumer reporting agency;
- (3) The proper information regarding the third party who is to receive the consumer report or the time period for which the consumer report must be available to users of the consumer report.

A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a consumer credit report must comply with the request not later than three business days after receiving the request. A consumer reporting agency is required to develop procedures involving the use of telephone, fax, the internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a consumer credit report in an expedited manner, with the goal of processing a request within 15 minutes of that request. (R.C. 1349.52(E).)

The bill requires a consumer reporting agency to remove or temporarily lift a freeze placed on a consumer credit report only in the following cases (R.C. 1349.52(E)(1)):

- (1) Upon consumer request;
- (2) If the consumer credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer credit report for this reason, the consumer reporting agency must notify the consumer in writing at least five business days prior to removing the freeze on the consumer report.

Written notice

The bill requires a consumer reporting agency, when required by the "Fair Credit Reporting Act," 84 Stat. 1128 (1970), 15 U.S.C. 1681g(c) to provide a summary of rights, or when receiving a request from a consumer for information about a security freeze, to provide a written notice specified in the bill detailing the consumer's rights with respect to obtaining a security freeze on the consumer's

credit report (see **COMMENT** for specific notice that consumer reporting agency must provide consumer) (R.C. 1349.52(F)).

Maintaining a security freeze

The bill requires a consumer reporting agency to keep a security freeze in place until the consumer requests that the security freeze be removed. A consumer reporting agency must remove a security freeze within three business days of receiving a request for removal from the consumer when the consumer provides the following (R.C. 1349.52(G)):

- (1) Information generally considered sufficient to identify the consumer;
- (2) The unique personal identification number or password provided by the consumer reporting agency.

Entities to whom a credit report can be released

The bill allows a consumer reporting agency to release a consumer credit report on which a security freeze has been placed to the following (R.C. 1349.52(H)):

- (1) A person, or subsidiary, affiliate, or agent of that person, or an assignee of a financial obligation owing by the consumer to that person, or a prospective assignee of a financial obligation owing by the consumer to that person in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument (reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades or other permissible use);
- (2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted, for purposes of facilitating the extension of credit or other permissible use;
- (3) Any state or local law enforcement agency, trial court, or private collection agency acting pursuant to a court order, warrant, or subpoena;
- (4) Any federal, state, or local governmental entity, agency, or instrumentality that is acting within the entity's, agency's, or instrumentality's authority;
- (5) A state or local child support enforcement agency;

(6) A person seeking to use the information contained in the consumer's credit report for the purpose of prescreening pursuant to the "Fair Credit Reporting Act";

(7) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed;

(8) Any person or entity providing a consumer with a copy of the consumer's credit report upon the consumer's request.

Fees

The bill prohibits a consumer reporting agency from charging a consumer any fee to place a security freeze on that consumer's credit report. The consumer reporting agency may charge a reasonable fee, not to exceed \$5, to a consumer who elects to remove or temporarily lift a security freeze on that consumer's credit report and may charge a reasonable fee, not to exceed \$5, to a consumer who fails to retain the original personal identification number provided by the consumer reporting agency and must be reissued the same or a new personal identification number. (R.C. 1349.52(I).)

Changing information in a consumer credit report

The bill provides that if a security freeze is in place, a consumer reporting agency must not change any of the following official information in a consumer credit report without sending a written confirmation of the change to the consumer within 30 days of the change being posted to the consumer's file (R.C. 1349.52(J)):

- (1) Name;
- (2) Date of birth;
- (3) Social security number;
- (4) Address.

Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation must be sent to both the new address and the former address (R.C. 1349.52(J)).

Exemption for certain consumer reporting agencies

The bill does not apply to a consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer reporting agencies and does not maintain a permanent database of credit information from which new consumer reports are produced, except that the reseller of credit information must honor any security freeze placed on a consumer report by another consumer reporting agency (R.C. 1349.52(K)).

The following entities are not required to place a security freeze on a consumer report (R.C. 1349.52(L)):

(1) A check services company or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment;

(2) A demand deposit account information service company that issues reports, regarding account closures due to fraud, substantial overdrafts, automated teller machine abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a demand deposit account at the inquiring bank or financial institution.

Investigation by Attorney General

The bill permits the Attorney General to conduct an investigation if the Attorney General, based on complaints or the Attorney General's own inquiries, has reason to believe that a consumer reporting agency has failed or is failing to comply with the above requirements of the bill, which are in R.C. 1349.52. In any investigation conducted pursuant to this provision, the Attorney General may administer oaths, subpoena witnesses, adduce evidence, and subpoena the production of any book, document, record, or other relevant matter. If the Attorney General subpoenas the production of any relevant matter that is located outside this state, the Attorney General may designate a representative, including an official of the state in which that relevant matter is located, to inspect the relevant matter on the Attorney General's behalf. The Attorney General may carry out similar requests received from officials of other states. (R.C. 1349.52(M)(1), (2), and (3).)

Any person who is subpoenaed to produce relevant matter must make that relevant matter available at a convenient location within this state or the state of the representative designated above. Any person who is subpoenaed as a witness or to produce relevant matter may file in the Franklin County Court of Common

Pleas, the county in this state in which the person resides, or the county in this state in which the person's principal place of business is located a petition to extend for good cause shown the date on which the subpoena is to be returned or to modify or quash for good cause shown that subpoena. The person may file the petition at any time prior to the date specified for the return of the subpoena or within 20 days after the service of the subpoena, whichever is earlier. (R.C. 1349.52(M)(4) and (5).)

Any person who is subpoenaed as a witness or to produce relevant matter must comply with the terms of the subpoena unless the court orders otherwise prior to the date specified for the return of the subpoena or, if applicable, that date as extended. If a person fails without lawful excuse to obey a subpoena, the Attorney General may apply to the Court of Common Pleas for an order that does one or more of the following (R.C. 1349.52(M)(6)):

- (1) Compels the requested discovery;
- (2) Adjudges the person in contempt of court;
- (3) Grants injunctive relief to restrain the person from failing to comply with R.C. 1347.12 or 1349.19, whichever is applicable;
- (4) Grants injunctive relief to preserve or restore the status quo;
- (5) Grants other relief that may be required until the person obeys the subpoena.

Civil action

The Attorney General has the authority to bring a civil action in a court of common pleas for appropriate relief, including a temporary restraining order, preliminary or permanent injunction, and civil penalties, if it appears that a consumer reporting agency has failed or is failing to comply with the above provisions of the bill, which are in R.C. 1349.52. Upon its finding that a consumer reporting agency has intentionally or recklessly failed to comply with those provisions, the court must impose a civil penalty upon the consumer reporting agency as follows (R.C. 1349.52(N)(1)):

- (a) A civil penalty of up to \$1,000 for each of the first 60 days that the consumer reporting agency fails to comply;
- (b) A civil penalty of up to \$5,000 for each day commencing with the 61st day and continuing through the 90th day that the consumer reporting agency fails to comply;

(c) A civil penalty of up to \$10,000 for each day commencing with the 91st day that the consumer reporting agency fails to comply.

Any civil penalty that is assessed must be deposited into the Consumer Protection Enforcement Fund. In determining the appropriate civil penalty to assess, the court must consider all relevant factors, including whether or not the defendant acted in bad faith in failing to comply with R.C. 1349.52. (R.C. 1349.52(N)(2) and (3).)

Any consumer reporting agency that is found by the court to have failed to comply with the above provisions of the bill, which are in R.C. 1349.52, is liable to the Attorney General for the Attorney General's costs in conducting an investigation and bringing an action (R.C. 1349.52(O)).

The rights and remedies that are provided under R.C. 1349.52 are in addition to any other rights or remedies that are provided by law (R.C. 1349.52(P)).

Definitions

The bill defines the following terms (R.C. 1349.52(A)) for use in its provisions dealing with credit report security freezes:

(1) "Consumer reporting agency" means any person which, for monetary fees, 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 which uses any means or facility of interstate commerce for the purpose of preparing consumer reports.

(2) "Security freeze" means a notice placed in a consumer's credit report that prohibits a consumer reporting agency from releasing the consumer's credit report or information contained in the consumer's credit report without authorization from the consumer.

Public records

The existing Public Records Law defines "public record" as records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in Ohio kept by a nonprofit or for-profit entity operating such alternative school. Under existing law there are a number of records that are not a "public record," including medical records, records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and post-release control sanctions,

trial preparation records, intellectual property records, and peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT residential and familial information. (R.C. 109.43(A)(1).) The bill provides that "personal information" is not a public record (R.C. 109.43(A)(1)(z)). Under the bill, "personal information" for purposes of the Public Records Law means any of the following (R.C. 109.43(A)(12)):

(1) Social security number;

(2) Driver's license number or state identification card number;

(3) Account number or credit or debit card number, in combination with and linked to any required security code, access code, or password that would permit access to an individual's financial account.

Existing law provides that, generally speaking, all public records must be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Under the bill, a public office or person responsible for public records is prohibited from making available for public inspection or copying any public record that contains any personal information until that information is redacted from the public record. When making a public record available for public inspection and copying, the public office or person responsible for public records must notify the requester of any redaction of information or make the redaction plainly visible. (R.C. 149.43(B)(1).) The bill defines "redaction" for purposes of the Public Records Law as obscuring or deleting, from an item that otherwise meets the definition of "record," any personal information that is prohibited by the law of this state or the United States from being made available for public inspection or copying, or that is declared to be confidential by any such law and thereby precluded from being made available for public inspection or copying. "Redacting" means the obscuring or deleting of information of that nature from such an item. (R.C. 149.43(A)(11).) "Designee" means a designee of the elected official in the public office if that elected official is the only elected official in the public office involved or a designee of all the elected officials in a public office that includes more than one elected official. "Elected official" means an official elected to a local or statewide office. It does not include the Chief Justice or a justice of the Supreme Court or a judge or clerk of a court of appeals, court of common pleas, municipal court, or county court. (R.C. 149.43(A)(13) by reference to R.C. 109.43.)

Electronic copies

The bill prohibits a public office, or person responsible for a public office's public records, that decides to make electronic copies of any document or other

record of the public office available online to the public through the internet from doing so without first redacting from that record any personal information or information that is declared to be confidential by any such law and thereby precluded from being made available for public inspection or copying (R.C. 149.46).

Confidentiality of social security numbers

The bill provides that a person's social security number is confidential (R.C. 149.45).

Statute of limitations for civil action of identity fraud

Existing law provides that an action for relief on the ground of fraud must be brought within four years after the fraud accrued. Under the bill, if the cause of action is identity fraud, the action must be brought within five years after identity fraud accrued. (R.C. 2305.09(C).)

Limitation on criminal prosecution of identity fraud

Under current law, if the period of limitation for a felony (six years), a misdemeanor other than a minor misdemeanor (two years), or a minor misdemeanor (six months) or a prosecution for certain specified offenses (20 years) has expired, prosecution must be commenced for an offense of which an element is fraud or breach of fiduciary duty, within one year after discovery of the offense either by an aggrieved person, or by the aggrieved person's legal representation who is not a party to the offense. The bill provides that if the period of limitation described above has expired, prosecution for identity fraud must be commenced within five years after discovery of the offense either by an aggrieved person or the aggrieved person's legal representation who is not a party to the offense (R.C. 2901.13(B)).

Social security number on death certificates

Existing law requires that any death certificate registered with the local registrar of vital statistics must contain the social security number of the decedent, if available. Existing law also states that a social security number obtained under R.C. 3705.16 is a public record under R.C. 149.43. The bill removes the provision making the social security number a public record. (R.C. 3705.16(C).)

Enforcement of identity fraud crimes

The bill requires the Attorney General to cooperate with and provide technical assistance to any local law enforcement agency in the state, upon that

agency's request, with respect to enforcement of identity fraud crimes (R.C. 109.941).

COMMENT

Below is the notice that a consumer reporting agency must provide a consumer when required to do so by the "Fair Credit Reporting Act" or when a consumer makes a request for information about a security freeze (R.C. 1349.52(F)):

"Ohio Consumers Have the Right to Obtain a Security Freeze:

You may obtain a security freeze on your credit report to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a "security freeze" on your credit report pursuant to Ohio law. The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization or approval. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit report, within five business days you will be provided a personal identification number or password to use if you choose to authorize the release of your credit report for a specific party or parties or for a specific period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

- (1) Information generally considered sufficient to identify the consumer;
- (2) The unique personal identification number or password provided by the consumer reporting agency;
- (3) The proper information regarding the third party who is to receive the consumer report or the time period for which the consumer report shall be available to users of the consumer report.

A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report shall comply with the request not later than three business days or less after receiving the request.

A security freeze does not apply to circumstances in which you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow your own application for credit. You should plan ahead and lift a freeze, either completely if you are shopping around, or specifically for a certain creditor, a few days before actually applying for new credit."

HISTORY

ACTION	DATE
Introduced	02-20-07

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