



Legislative Update

April 2007

FEDERAL

In February and March, the 110th Congress moved quickly on many issues of importance to the Democratic majority, and to bi-partisan coalitions of Members in key committees. Following are active federal issues of interest to TransUnion and its customers.

Phone Pretexting & Access to Wireless Customers' Name, Address & Phone

One of the bi-partisan priority bills for the House's Energy & Commerce (E&C) Committee is HR 936. It would add new protections against gaining fraudulent access to Confidential Proprietary Network Information (CPNI), defined as detailed transactional information associated with customer telephone number accounts, but does not include the directory listing information (i.e., name, address and telephone number associated with each account).

The current version of HR 936 would require an opt-in for any release or use by a telecommunications carrier of a wireless customer's name, address and telephone number. On April 2, the FCC issued an Order and Notice of Proposed Rulemaking concerning new protections for CPNI against prescreening. It remains to be seen whether these new protections will affect the trajectory of HR 936. The Order and Notice of Proposed Rulemaking is silent on the wireless customer's name, address and phone number issue.

Spyware Bill

Another high priority, bi-partisan bill for the E&C Committee is one aimed at curbing abusive Internet practices. HR 964, the Securely Protect Yourself Against Cyber Trespass Act (the SPY Act), would prohibit certain deceptive acts and practices, but would unnecessarily restrict certain information-gathering practices that could prove harmful to the growth of Internet commerce and not protective of individual consumers.

Senator Mark Pryor's File Freeze Bill

On March 7, Senator Mark Pryor (D-Arkansas) introduced a fairly comprehensive file freeze bill, S 806, which was referred to the Banking Committee. There has been no indication from the Banking Committee that the file freeze issue is a priority. Similarly, there also is no indication from the House Financial Services Committee that the file freeze issue has any traction on that side of the isle either.

House Financial Services Committee April Hearing on Credit Reporting Agency Dispute Reinvestigations & Consumer Report Accuracy

A hearing was scheduled for April 26 in the Financial Services Committee focusing on the dispute reinvestigations process used by consumer reporting agencies and data furnishers. The two precipitating incidents reported in a December 2006 story in *The Boston Globe* involved some form of mixed identities, although in neither case is it clear that identity theft was a factor. Consumer Data Industry Association (CDIA) President & CEO, Stuart K. Pratt, is expected to testify on behalf of the credit reporting industry. (The hearing was postponed, with no new date yet set.)

Real ID—DHS Implementing Regulations, States Push Back

On March 21, the Data Privacy and Integrity Advisory Committee of the Department of Homeland Security held a public meeting in which it heard an overview of the recently released Proposed Rulemaking for Real ID from the officials responsible for it, and also heard "outside perspectives" from representatives of the National Governors' Association, the American Civil Liberties Union, the Center for Democracy & Technology, and the Electronic Privacy Information Center, among others.

From the comments, it was clear that there are many important and unresolved issues from the states and other stakeholders. These include definitional issues, implementation timeframes, card design, privacy, determination of compliance, and the verification of eligibility documents, among others. Further, there are developments in the states which seem likely to undermine the timely national implementation of the Act, or to result in other unintended consequences.

Some states have decided to create a new class of specialized drivers' licenses that bring undocumented immigrants into their system, essentially ignoring the requirements of Real ID. For example, the *Chicago Tribune* reported on March 29 that "Illinois would become one of only a handful of states in the nation to authorize illegal immigrants to drive legally on their roads under legislation the Illinois House passed to create a special driver's permit for undocumented residents.

The 60-54 vote was an important victory for immigrant advocates, who have focused their energy this spring on several measures before the General Assembly." In other states, including Montana, Maine, Utah and New Hampshire, legislators are in various stages of considering bills that would curtail, postpone, cancel or otherwise impact their state's implementation of the Real ID Act's provisions.

Housing & the Sub-Prime Mortgage Crisis—Suitability Bill

Media coverage of the growing crisis in sub-prime mortgages, as being examined by Committees in both the House and Senate, has placed a spotlight on various proximate causes. According to the *American Banker*, one remediation being mentioned is the "f" word,

resurfacing from the Savings & Loan crisis of the late 1980s— forbearance. Under some forbearance proposals, institutions holding non-performing mortgages would, in theory, be granted some type of reprieve from their loan performance rules to allow time, also in theory, for other relief to be obtained.

Another concept, also reported in *American Banker* and contained in a bill being developed by Senator Charles Schumer (D-New York), would place a new requirement on lenders and mortgage brokers to make a suitability determination with respect to the borrower. In effect, the lender or broker would be required to pass through another hurdle before writing the loan—to reach a determination that the prospective loan terms met some as-yet-undefined standard of appropriateness for the borrower's circumstances. The language of Senator Schumer's bill is not yet available. The concept of a suitability standard is present elsewhere in U.S. securities law, but not generally in consumer credit, and specifically not in residential mortgage lending.

However, in South Africa's recently-enacted National Credit Act, there are strong provisions regarding the "reckless extension of credit," with significant sanctions against the lender. But the effective date of those provisions still lies several months away, so there is yet no practical experience or evidence of the unintended consequences being predicted by U.S. lenders.

Senate Homeland Security & Governmental Affairs Committee—Inquiry into Credit Card Practices by Permanent Subcommittee on Investigations

Following a March 7 hearing on the billing practices (fees, interest rate calculations, grace periods, etc.) of major credit card issuers, Subcommittee Chairman Carl Levin (D-Michigan) issued a press release stating, "The credit card industry thrives on the confusion and powerlessness of consumers to both nickel and dime the average card-holder and to commit highway robbery of anyone who slips up even in the slightest." TransUnion was contacted in late March by this Subcommittee's staff members, who wish to learn more about credit scoring, since they learned in the hearing that some of the banks' practices are tied to the use of credit scores. Those discussions were held in late April

TransUnion's Role in the "Non-Traditional" Data Furnisher Research

Recently, TransUnion played a vital role in the study by the Political and Economic Research Council (PERC) and the Brookings Institute on the impact of "full file reporting" by energy utilities and telecommunications companies. The study suggested that significant improvements in score distributions and scoring model performance could be achieved in an environment of pervasive full-file reporting by these sectors.

Further, the study found that those benefits would be most directly felt by those with "thin" credit files. Minorities, immigrants, the young and often the old are disproportionately represented in the thin-file population. Advocates for the interests of these groups, including Members of Congress and elected officials in the state legislatures, have all expressed interest in this issue. The fact that, for many years, TransUnion has encouraged and enabled energy and telecommunications companies to engage in full-file reporting directly into the national credit reporting database made this study possible. TransUnion looks forward to supporting the next phase of this research—an examination of the impediments and benefits to full-file reporting from the standpoint of the energy and telecommunications companies

themselves, and an exploration of additional steps in law or regulation to not only allow, but to encourage these sectors to fully report.

STATES

This winter, state legislatures continue to focus on identity theft prevention measures allowing consumers to freeze their credit file, limiting Social Security numbers, and requiring notices for security breaches. Insurance scoring continues to be a hot topic as the FTC still leaves open questions because it has not released its study on the topic. In Illinois, scoring with information from utility payments is getting lots of attention as electric rates were unfrozen this winter after a ten-year lock.

Security Freezing

State legislatures continue to see security freezing legislation as low-hanging fruit. To date this year, over 100 security freeze bills in thirty states have been introduced. With the addition of Arkansas, New Mexico, West Virginia and Wyoming, thirty-one states and Washington, D.C. have enacted security freezing laws. It is TransUnion's position to create as consistent freeze laws as possible from state to state – holding the line on fees and compressed timelines for example – with no additional compliance requirements.

Here are updates on recently enacted laws and active state legislation TransUnion expects to see passed:

Arkansas House Bill 2215

- Signed into law on March 20.
- Only identity theft victims with a police report can freeze their credit files.
- Standard timeframe is ten days for a consumer reporting agency to place a freeze, three days to lift the freeze and three days to remove the freeze.
- Fees can not be more than \$10 for each security freeze, removal of a security freeze, or temporary lifting of a security freeze for a period of time.
- Effective Jan. 1, 2008.

Hawaii House Bill 1612

- Security freeze law solely grants identity theft victims the right to freeze their credit file.
- Currently, the legislature is revisiting this law to extend this right to all consumers.

Indiana Senate Bill 403

- First bill in the U.S. that does not allow consumer-reporting agencies to recoup fees from consumers for freezing services.
- Effective date would be July 1, 2007.

Maryland House Bill 117

- Security freeze application is broad – can use a consumer report and any information derived from it.
- Bill contains a provision requiring a fifteen minute temporary lift of a freeze and caps fees at \$5 for placing, lifting and removing the freeze.
- Effective date, Jan. 1, 2008, subject to governor approval.

Michigan Senate Bill 340 / House Bill 4103

- Competing bills SB 340 and HB 4103 have passed their respective chamber and likely will be combined.
- Both would require consumer reporting agencies to provide a password reminder or replacement PIN within fifteen minutes of electronic request.
- Effective date is likely to be Jan. 1, 2008.

Mississippi Senate Bill 3034

- Limits freeze to identity theft victims and has standard timelines for placing, lifting and removing freeze.
- Bill awaits Governor Haley Barbour's signature, and the effective date would be July 1, 2007.

Montana Senate Bill 116

- Signed into law on April 5.
- Gives all consumers in the state the right to freeze their credit file.
- Requires consumer reporting agency to place security freeze on an identity theft victim's credit file within twenty-four hours of receiving request, even if received by mail.
- \$3 for placing and temporarily lifting a freeze, no charge for removing a freeze and \$5 for replacing a PIN.
- Fifteen-minute temporary lift of a freeze by Jan. 31, 2009.
- Act would go into effect July 1, 2007.

New Mexico Senate Bill 165

- Signed into law on April 6.
- Gives all consumers in the state the right to freeze their credit file.
- Limited freeze to extensions of credit.
- Enables persons age 65 and older to freeze, lift and remove a freeze for no charge.
- Provides fifteen-minute temporary lift of a freeze by Sept. 1, 2008.
- Allows five days to place the freeze and three days to remove it.
- Effective July 1, 2007.

North Dakota House Bill 1517

- Passed unanimously out of Conference Committee on April 5 and is awaiting Governor John Hoeven's signature.
- Applies freeze broadly to a consumer report for any use and it sets a lower standard of 24 hours for consumer reporting agencies to place a freeze on an identity theft victim's credit file
- Allows consumer reporting agencies to charge up to \$5 for placing and lifting a freeze.
- Effective date would be June 1, 2007.

Ohio House Bill 46

- Still early in the Ohio legislative cycle, but it will likely be the vehicle for security freezing.

Oregon Senate Bill 583

- Omnibus identity theft bill that contains security freezing, security breach notices and Social Security number restrictions.
- Allows all consumers to place freeze and sets timelines for placing, lifting and removing a freeze
- Allows fees of up to \$10 and is limited to extensions of credit.
- Effective date would be Jan. 1, 2008.

Texas Senate Bill 222

- Amendment to current law that limits security freezing to identity theft victims and is open it to all Texas consumers.
- Limits freeze to extensions of credit, while allowing consumer reporting agencies to charge fees not to exceed \$10 for placing, temporarily lifting and removing the freeze.

Washington Senate Bill 5826

- Passed in the House and is currently in the Senate for concurrence.
- Limits a security freeze to extensions of credit.
- Only considers those with a police report as identity theft victim.
- Allows fifteen minute temporary lift of a freeze.
- Allows consumer reporting agencies to charge up to \$10 for placing, lifting and removing a freeze.
- Allows consumers age 65 and older to get freeze services at no charge.
- Exempts mortgage brokers from the application of the freeze.
- Effective date would be Sept. 1, 2008.

West Virginia Senate Bill 428

- Signed into law on April 3.
- Gives all consumers in the state the right to freeze their credit files.
- Applies to all uses of a consumer report rather than just for extensions of credit.
- Gives consumer reporting agencies five days to place the freeze, three days to lift the freeze and three days to remove the freeze.
- Will provide temporary lift of freeze to fifteen minutes by Sept. 1, 2008.
- Caps fees at \$5 consumer reporting agencies may charge for placing, lifting or removing the freeze or for providing a replacement PIN.
- Effective June 8, 2007.

Wyoming Senate File 53

- Signed omnibus bill into law on March 1.
- Contains security breach notice provisions, which gives all consumers in the state the right to freeze their credit file.
- Prohibits a “credit rating agency” from releasing the consumer’s credit report or any information from it relating to an extension of credit or the opening of a new account.
- Allows consumer reporting agencies to charge up to \$10 each for placing, lifting or removing a freeze and keeps timelines to place, lift or remove the freeze.
- Imposes a fifteen minute temporary ban lift by Sept. 1, 2008.
- Effective July 1, 2007.

Social Security Numbers

Legislators continue to grapple with the perceived need to protect the public from abuse of Social Security numbers in perpetrating identity theft. While some want to limit SSNs by truncating its display, masking it or defining legitimate versus illegitimate uses, others would like to see more unfettered access to SSNs to ensure a greater degree of accuracy in transactions.

Minnesota House File 131

The net result of the passage of HF 3132 in 2005 is starting July 1, TransUnion will provide no more than the last four digits of the SSN of a consumer who is a resident

of the state of MN. TransUnion will continue to advocate for clear exemptions, allowing the use and reporting of SSN for transactions permitted by GLBA and FCRA. HF 131 recently passed the House with some exemptions, but the situation continues to be ambiguous with the final outcome unclear. Meanwhile there is a certain compliance date of July 1, which TransUnion will meet.

Texas House Bill 2061

On March 28, Governor Rick Perry signed into law HB 2061, which provides that unless another law requires an SSN to be maintained in a government document on written request from an individual or the individual's representative, a county clerk shall redact within a reasonable amount of time all but the last four digits of the individual's SSN from information maintained in the clerk's official public records, including electronically stored information maintained by or under the control of the clerk.

It also provides that an instrument submitted for recording is not required to contain an individual's SSN and the preparer of a document may not include an individual's SSN in a document that is presented for recording in the office of the county clerk. This law reflects concerns regarding the resumption of access to public records in the wake of a Feb. 21 opinion from Attorney General Greg Abbott that limits the availability of SSNs in public documents, potential civil and criminal liability for inadvertent disclosure of SSNs by state and county officials and privacy concerns for citizens whose information is contained in the public records.

Insurance Scoring

Despite well entrenched laws in most states regulating the use of credit by insurers, a couple of states continue to attempt to ban the practice of rating and underwriting using credit information in personal lines.

Delaware Senate Bill 31

Delaware is seeing a renewed push to pass a bill barring insurance companies from using credit scores in setting auto and homeowners' insurance rates. Senator Margaret Rose Henry, the bill's prime sponsor, does not think that disclosure of credit score use goes far enough and a complete ban is what is needed to protect consumers. The Senate is expected to take up the debate of SB 31 on May 2, 2007, and will likely pass the bill.

Oregon Ballot Initiative 71

Despite a defeat in November with his ballot initiative that would have banned insurer's use of credit, Bill Sizemore is collecting signatures to bring the initiative back on the November 2008 ballot. Current state law already provides one of the most restrictive arenas for obtaining a consumer's credit history in determining insurance rates and most consumers / voters feel that they benefit from insurance scoring. Sizemore only needs 75,000 signatures to bring the measure to the ballot and is expected to get these signatures easily.

Utilities and Scoring – Illinois House Bill 318

As previously noted, the PERC/Brookings study showing the importance of non-traditional data to underserved consumers is getting a lot of traction with many groups. However, in

Illinois this winter the state rolled-back its freeze on electric rates, leaving many consumers in the state with demonstrably higher utility bills. Representative Deborah Graham has been adamant in her belief that credit bureaus should not develop scores with utility data because they are essential services and not credit choices, like credit cards or a mortgage. Despite all of the evidence that shows more consumers get a boost from including utility data than are potentially hurt, she has pushed HB 318, which would ban credit bureaus from scoring using utility payment information. The bill was defeated on its third reading on the House floor on March 27.

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