



## Legislative Update

June-July 2007

### FEDERAL

#### **Security Breach Notice, Data Broker, Information Security & File Freezing**

These issues re-emerged in Congress as active topics in April and May, with bipartisan bills reported from the Senate's Committees on the Judiciary and on Commerce, Science & Transportation and in the Senate's Committee on Banking, Housing and Urban Affairs. In the House of Representatives, the Energy & Commerce Committee has introduced, but has not acted on, a bipartisan bill. We await the Financial Services Committee's bill on this topic. While security breach notice is the unifying theme, the active bills in the various Senate and House committees address an inconsistent mix of other issues, including information security, regulation of data brokers and credit file freezing.

The Senate Judiciary Committee's bill, S 495:

- provides new criminal penalties for organized crime involvement in security breaches and for concealing breaches
- creates a new disclosure and dispute mechanism for all "data brokers" not currently regulated under the Fair Credit Reporting Act ("FCRA")
- creates information security and security breach requirements
- establishes controls over the government's use of commercial database services.
- contains no file freezing provision

This bill was reported out of the Judiciary Committee on May 23 and now awaits action on the Senate floor.

The Senate's Committee on Commerce, Science and Transportation also moved on a bill, S 1178, reporting amendments on April 23 that:

- provides for information security and security breach notice
- is silent on the data broker issue
- contains a credit file freeze provision, creates an Information Security and Consumer Privacy Committee under the auspices of the Federal Trade Commission ("FTC") Chairman
- requires a joint study by the FTC and the Department of Justice of the correlation between methamphetamine use and identity theft crimes
- creates privacy protections for Social Security Number similar to those found in several state laws

- provides wide enforcement authority to the FTC, the banking agencies and to the states' Attorneys General

In the Senate's Committee on Banking, Housing and Urban Affairs, Senators Thomas Carper (D-Delaware) and Robert Bennett (R-Utah) introduced S 1260 on May 1st, a bipartisan bill that contains provisions for information security and security breach notice that are generally more narrowly drawn than the bills from the Commerce or Judiciary committees, with administrative enforcement and more robust federal preemption. The bill contains no data broker or file freeze provisions, however, it must be noted that neither the Banking Committee Chairman, Christopher Dodd (D-Connecticut) nor the Ranking Member, Richard Shelby (R - Alabama) has weighed in on this matter.

In summary, and notwithstanding the professed desire of Senate Majority Leader Harry Reid (D-Nevada) to prioritize this issue, the outcome in the Senate alone is impossible to predict, let alone in the eventual conference committee to reconcile differences with the House bill. Action before the August recess seems unlikely, and when Congress returns in September, it will face intense debates on the Iraqi war, the immigration issue and other urgent matters. Floor time will be scarce—and yet some Floor time may be necessary given the differences among the committees' bills.

Meanwhile, in the House, the Energy and Commerce Committee introduced bill HR 958 on Feb. 8 with broad bipartisan support. It has not been acted upon it due to higher priorities. This bill addresses information security, security breach notice and data broker access and dispute requirements, giving sweeping rulemaking authority to the FTC, and providing for enforcement by the FTC and the states' Attorneys General.

The Financial Services Committee under Chairman Barney Frank (D - Massachusetts) has not yet produced a committee bill. A continually-postponed hearing on the adequacy of credit reporting dispute investigations, originally scheduled for Mar. 1, is currently scheduled for June 19, with CDIA President and CEO Stuart K. Pratt testifying for the industry. TransUnion has provided CDIA with detailed background information to support both the written and the oral testimony. To date, the hearing is informational, i.e. no particular piece of legislation is being considered. Thus, it is likely that the committee members will raise questions regarding security breach notice, SSN protections, file freezing and data brokers.

### **Other Federal Legislation**

- **Mortgage Triggers:** Legislative provisions, which would ban or restrict triggers prescreening services, are included in several bills, including HR 1869 by Rep. Nydia Velazquez (D, New York, 12<sup>th</sup> District), and S 1405 by Senator Sam Brownback (R, Kansas). Community bankers have strongly supported these bills.

- **Non-Traditional Data Furnishers:** the Financial Services Committee reported bill on May 3, HR 1852, to modernize the National Housing Act with an amendment saying:

“The Secretary shall carry out a pilot program to establish, and make available to mortgagees, an automated process for providing alternative credit rating information for mortgagors and prospective mortgagors under mortgages on 1- to 4-family residences to be insured under this title who have insufficient credit histories for determining their creditworthiness. Such alternative credit rating information may include rent, utilities, and

insurance payment histories, and such other information as the Secretary considers appropriate.”

Also, a bill aimed at updating the public Housing Act of 1937, HR 1851, contains a provision mandating reporting of rental payments to the nationwide consumer reporting agencies “to the extent that the family...agrees in writing to [the] reporting.”

- **Spyware:** The House Judiciary Committee reported a bill, HR 1525, on May 21 and the House passed on May 22, establishing criminal penalties for the illicit indirect use of personal computers. It now awaits action in the Senate, where it has been referred to the Judiciary Committee. Meanwhile, the House Energy & Commerce Committee reported bill HR 964 on May 24, which awaits action on the House Floor. Section 2 of this bill reasonably bans various deceptive acts and practices related to spyware. Section 3, however, restricts various types of information collection practices, allowing exceptions in some cases and requiring notice and opt-in in other cases and requiring the FTC to study the issue and to produce a report. The bill provides broad rulemaking authority to the FTC and creates civil penalties of \$3 million for each violation of Section 2 and \$1 million for each violation of Section 3. The U.S. Chamber of Commerce (TransUnion is a member) issued a letter on June 5 to Members of the House of Representatives describing the issues with this bill. The House passed this bill on June 6.

## STATE

### **Mortgage Triggers**

The mortgage triggers issue has gained a lot of attention in the past few months because state and federal mortgage broker and community banking associations want to eliminate the practice. Connecticut, Maine, Massachusetts and Minnesota have taken up the issue of mortgage triggers this spring. Our position is that mortgage triggers prescreen services bring more consumer choice and can help the consumer save money on their mortgage.

Still, many states want to curtail its use because of the political pressure from the brokers and community bankers. We have been trying to shift the focus away from the bureau’s role in providing the product to a more narrow focus on where many of the consumer complaints originate and the misuse of triggers.

- **Minnesota SF 241**

The Minnesota legislature enacted Senate File 241, which prohibits the sale or exchange of a mortgage inquiry to a third party, unless a) the third party holds an existing mortgage loan on the property or b) if there is a credit inquiry arising from a consumer mortgage loan application when the sale or exchange is triggered by an inquiry made in response to an application for credit. It will become effective on August 1st. It was intended to ban mortgage triggers prescreens.

- **Connecticut HB 7073**

On June 6, Connecticut enacted HB 7073, which suggests mortgage triggers creates an unfair or deceptive act or practices if users fail to state properly in the initial phase of the solicitation that the solicitor is not affiliated with the lender or broker with which the consumer initially applied. In addition, businesses must clearly and conspicuously state in the initial phase of the solicitation that the solicitation is based on personal information about the

consumer that was purchased, directly or indirectly, from a consumer reporting agency without the knowledge or permission of the lender or broker with which the consumer initially applied. The caller also must state that they must comply with the FCRA and make a firm offer of credit.

- **Maine LD 1869**

On June 4, the Maine legislature passed and sent to the governor a predatory lending bill which includes, in small part, a section to amend the state FCRA to address mortgage triggers. Like the Connecticut law, the Maine bill focuses on unfair and deceptive practice by lenders or loan brokers using prescreened trigger lead information derived from a consumer report to solicit a consumer who has applied for a loan with another lender or loan broker. A lender or loan broker must state in the initial phase of the solicitation that the solicitor is not affiliated with the lender or loan broker with which the consumer initially applied; and further, in the initial solicitation they must conform to state and federal law relating to prescreened solicitations using consumer reports, including the requirement to make a firm offer of credit to the consumer. A lender or loan broker may not knowingly or negligently use information regarding consumers who have opted out of prescreened offers of credit or who have placed their contact information on the federal do-not-call registry; or solicit a consumer with offers of certain rates, terms and costs with intent to subsequently raise the rates or change the terms to the consumer's detriment.

- **Massachusetts HB 3925**

Massachusetts' bill would forbid a consumer reporting agency from engaging in or offering any service whereby the agency sells or otherwise makes available to a third party any information pertaining to a loan application a consumer has made with a bank or credit union. The bill is very broad. We continue to work to amend the Massachusetts bill so that it focuses on unfair and deceptive practices in lending, rather than on credit bureau practices.

## **Social Security Numbers**

### **Minnesota SF 596**

In 2006, Minnesota passed a law requiring that businesses not sell Social Security numbers obtained through the course of business. This would have forced TransUnion to truncate the SSN on all data output products and services. As originally enacted, the law was to become effective July 1. However, on May 22 an amendment was passed that moves the law's effective date to July 1, 2008.

This amendment did not alter the compliance requirement that TransUnion truncate SSNs on output; rather it delayed the compliance date. Thus, TransUnion has made the decision to defer the mandatory MN SSN truncation change to all customers until July 1, 2008. To ease the operational impact on our customers as well as our own business, we will allow our customers to make this change to their online transactions through individual subscriber code activation, any time between June 21, 2007 and July 1, 2008.

## **New Jersey Regulations**

In 2005, NJ passed the Identity Theft Protection Act, which contained provisions on security freezes of credit data, breach of security notices and restrictions on social security number usage. This Act prescribed that the Division of Consumer Affairs effectuate rules by Dec. 31, 2005. However, regulations were proposed on April 16. While TransUnion comments on the

proposal will focus on a subset of the issues we see with the freeze and SSN provisions, CDIA, our trade association, is addressing many other issues with the proposed rule.

The underlying freeze, breach and SSN statute was a version of similar laws enacted around the country. However, the regulation contains detailed provisions not authorized by the statute or in conflict with its provisions. In many cases – like creating a new definition of a CRA, requiring freeze information on corporate Web site homepages, creating new PIN replacement requirements and having CRA give the Division detailed plans to implement a 15-minute temporary lift of a freeze – the regulation mandates items not authorized in the original law.

It also has a number of security features for computer systems although no language in the statute authorized these mandates. While the statute requires notices to be sent after discovery of a breach without unreasonable delay, the regulation requires that the State police are contacted within 6 hours, and notices be sent within 24 hours after they indicate that no criminal investigation is necessary. The regulation mandates that all notices be posted on your web site.

The proposed rule also seeks to insert new restrictions on the use of SSN. It would forbid an entity from refusing to provide services or products if an individual refuses to give his or her Social Security number, so long as the Social Security number is not necessary in order for the person or public or private entity to provide products or services and in where a person or a public or private entity requests a Social Security number from an individual, the person or public or private entity shall do so in conditions under which the Social Security number will remain confidential. These new requirements could hinder identity verification and fraud prevention and could bring the courts into trying to decide whether or not a Social Security number is necessary or confidential. Comments on the proposed rule are due by June 15.

### **Security Freezing**

In 2007, 113 security freeze bills were introduced in 32 states. To date, 37 states and Washington DC have enacted security freezing laws. Massachusetts, Michigan, and Ohio legislatures are still actively debating security freeze bills.

#### **• Massachusetts SB 2236 / HB 4018**

With competing and different security freeze bills passing out of their respective chambers, the security freeze issue is now in Conference Committee. While it is likely we will be allowed to charge fees, this is not a certain outcome of the conference. There is a proposal that would give consumers one free freeze and lift per year, while also providing freezes free to those 65 and older. Other issues include requiring CRAs to have a live operator on hand to handle disputes and having the Director of Consumer Affairs promulgate rules on the freeze. We continue to actively lobby the legislature on these issues. Effective date would be 90 days from enactment.

#### **• Michigan SB 340**

The passing of this bill by the Senate challenges us to develop a secondary authentication method using a consumer's PIN of choice and to develop a process to remind consumers of their PIN. In addition, the bill limits fees to \$10 for placing a freeze and replacing a PIN but allows no fees for lifting or removing a freeze. We continue to actively lobby on this bill and

push for delayed effective dates on any new process CRAs would have to develop. Effective date would be 90 days from enactment.

• **Ohio SB 6 / HB 46**

As the respective chambers have passed these bills, they would give all consumers in the state the right to freeze their files. We continue to discuss fees. Editorials in the *Cleveland Plain Dealer* call for no fees while we see reasonable remuneration for our services.

**Status of Other 2007 Freeze Enactments**

Here's a look at the recently passed laws, beginning with those that take effect July 1:

- Mississippi SB 3034 – Enacted March 20. Freeze limited to victims of ID theft.
- Montana SB 116 – Enacted April 5. Freeze open to all residents. CRAs may charge up to \$3 to place and lift, \$0 to remove, and \$5 to replace PIN. 15-minute lift and 24 hours to place freeze for ID theft victims after receipt of valid police report.
- New Mexico SB 165 – Enacted April 6. Freeze open to all residents. 15-minute lift. CRAs may charge \$10 for placement, \$5 to lift for a specific person or for a specific period of time, \$5 to remove, free for ages 65+.
- North Dakota HB 1417 – Enacted April 24. Freeze open to all residents. CRAs may charge up to \$5 to place or temporarily lift a freeze or to replace PIN. No fee for removal. 24 hours to place freeze by Aug. 1, 2009.
- West Virginia SB 428 – Enacted April 3. Freeze open to all residents. CRAs may charge up to \$5 to place, lift, and remove and \$5 for replacement PINs. 15-minute lift.
- Wyoming SF 53 – Enacted Mar. 1. Freeze open to all residents. CRAs may charge up to \$10 to place, remove and lift. 15-minute lift. Freeze laws that take effect Sept. 1:
- Indiana SB 403 – Enacted May 2. Freeze open to all residents. No fees.
- Nebraska LB 674 – Enacted May 25. Freeze open to all residents. CRAs may charge up to \$15 to place and \$ 5 for replacement pins. 15-minute lift.
- Texas SB 222 (pending signature) – amends their ID theft victims-only law to include all residents. CRAs may charge \$10 to place, lift for period of time, or remove freeze, and \$12 to lift for specific party.

Freeze laws that take effect Jan. 1, 2008:

- Arkansas HB 2215 – Enacted Mar. 20. Freeze limited to victims of ID theft.
- Maryland HB 117 – Enacted May 8. Freeze open to all residents. CRAs may charge up to \$5 to place, remove or temporarily lift.

Freeze laws that take effect Sept. 1, 2008

- Tennessee HB 200 – Enacted May 23. CRAs may charge up to \$7.50 to place freeze, no fees to lift freeze, \$5 to remove or replace PIN. Yearly CPI price increases allowed in \$.25 increments starting 1/1/10. 15-minute lift.
- Washington SB 5826 – Enacted May 15. Amends their ID theft victims-only law to include all residents. CRAs may charge up to \$10 to place, lift, or remove freeze. Free for ages 65+. Removes requirement that security breach notice recipients receive free freeze.

Legislative Updates are written and distributed by the Government Relations department and appear bi-monthly on TransUnion.com.

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