



Legislative Update

October 2006

Federal

Security Breach, Privacy Issues Now Await Next Congress

As October begins, Congress prepares to recess for the 2006 elections without passing legislation addressing security breach notices. The security breach issue is a proxy for the larger question of jurisdiction over privacy-related matters, with at least three separate Committees in both the House and Senate still sorting out their respective roles. In the House, Committees for Financial Services, Energy & Commerce, and the Judiciary have all been active in this area. The security breaches at the Veterans Administration brought in the Veterans' Affairs Committee as well. This jurisdictional question will remain on the long list of issues awaiting the attention of the next Congress when it convenes in January 2007. Although a lame duck session is expected after the November elections, it is extremely unlikely that privacy issues will be taken up at that time.

Growth in customer awareness of the file freezing issue, spurred by concerns from point of sale applications, was illustrated by a meeting in late August, convened by several of the major financial institutions with representatives from TransUnion, Equifax, Experian and Innovis. At that session, attendees discussed the need to form a more comprehensive industry position on file freezing in order to more effectively present the issue, both to Congress and in the state legislatures. Further industry-wide meetings on this matter are expected after the November elections.

In The States

Security Freeze Forecast

While the **Delaware** security freeze law just went into effect on Sept. 28, the **New York** security freeze law is effective Nov. 1 and seven more state security freeze laws are effective Jan. 1, 2007. **Delaware, New Hampshire, New York, Oklahoma, Rhode Island** and **Wisconsin** laws enable all consumers in their states to request a security freeze – victims of identity theft that have filed a valid police report may not be charged a fee while all other consumers may be charged a reasonable fee to freeze, temporarily lift or remove a freeze. **Hawaii and Kansas** laws limit the security freeze to victims of identity theft that have filed a valid police report. **Illinois** joined Vermont (effective July 1) in amending its security freeze law from an identity theft victim-only standard to opening the law up to everyone in the state. As there are already 25 states with freeze laws, security freeze legislation is sure to be one of the safest political plays in 2007. Interim committees in **Montana, New Mexico** and **Oregon** are working on freeze bills with input from the credit reporting industry and other concerned groups. Attorney General Rob McKenna of Washington is pressing for an overhaul of his

state's current freeze law that is limited to victims of identity theft and persons that receive a security breach notice. We can expect scores of security freeze bills introduced in the states that do not already have a law.

Insurance Scoring Lawsuits Update

While most states choose to regulate the way insurers use credit for rating and underwriting, in Florida and Michigan, regulators over the past few years have gone outside the legislative process in an attempt to ban insurance scoring. On Sept. 5, Florida's Administrative Law Judge ruled in favor of the Petitioners (Florida Insurance Council), holding that a May 22 Informational Memorandum, which sought to enforce a ban on all property and casualty insurers using credit reports, was itself a rule and that since it had not been presented as a rule, Office of Insurance Regulation could not enforce it. We expect the Final Order sometime this Fall.

Beginning Oct. 10, a three-judge panel of the Michigan Court of Appeals will hear the case, Insurance Institute of Michigan v Commissioner of the Office of Financial and Insurance Services, involving rules presented by Insurance Commissioner Linda Watters to ban the use of credit scoring in Michigan. In question is whether or not she has the authority to issue such a ruling and, therefore, whether or not it is enforceable. According to the Michigan Essential Insurance Code, the Michigan legislature specifically encouraged insurers to use additional factors, such as insurance scores, in their premium discount plans, as long as they met three criteria: uniform application, consistency with the purposes of the act, and reflecting reasonably anticipated reductions in losses or expenses.

International

On Sept. 1, TransUnion ITC in South Africa began providing free annual disclosures, upon request, in compliance with the new National Credit Act. There are many other compliance issues remaining to be sorted out, such as certain data retention rules and the regular production of synoptic reports for the government.

In October, South Africa hosts the 5th World Consumer Credit Reporting Conference. Representatives from the World Bank, executives from credit reporting agencies such as TransUnion, trade associations such as the Consumer Data Industry Association, and researchers such as Michael Turner from the Political and Economic Research Center, will meet in Cape Town for an exchange of current research findings, and discussions of operational and public policy issues affecting the growing worldwide community of consumer credit reporting agencies. TransUnion's International group will be well represented at this event. In addition, John Blenke, TransUnion's Executive VP and Corporate General Counsel, as the current Chairman of CDIA's Board of Directors, will be among those presiding at this meeting. For more information on this conference, go to <http://www.wccc2006.co.za>

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Bob Ryan

Vice President of Government Relations

(312) 466-7799

rryan@transunion.com

Eric Rosenberg

Director of State Government Relations

(312) 466-6323

erosenb@transunion.com

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