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Senator Thomas Umberg, Chair
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SUBJECT

Foster children: consumer credit reports

DIGEST

This bill revises requirements related to the placement of a security freeze, and the removal of a security freeze, on the credit report of a minor under the age of 16 years who has been placed in a foster care setting.

EXECUTIVE SUMMARY

Foster youth and nonminor dependents face a disheartening number of challenges as they grow up and age out of the foster system. One of those challenges is dealing with the consumer credit system. Not only are foster youth and nonminor dependents less likely to have adult role models who can educate them on the ins and outs of consumer credit, but they are also significantly more likely to be the victims of credit fraud. Current state law requires, beginning on a foster youth's 14th birthday and each year thereafter, a county welfare department, county probation department, or the California Department of Social Services (CDSS) to request the minor's credit report from each of the three major credit agencies, and to assist nonminor dependents with their credit reports as specified. State and federal law also permit a county welfare department or county probation department to request a credit freeze on behalf of a minor under the age of 16 years who is in a foster setting at the time of the request.

This bill is intended to improve the protections for foster youth and nonminor dependents by clarifying the existing security freeze process for freezes placed for foster youth at the request of a county welfare or probation department, or CDSS on behalf of those departments; requiring a credit reporting agency to automatically block information on a credit report, if it is determined that the foster youth has a credit report as a minor; and requiring that such freezes lift automatically when the foster youth turns 18 years of age. The author has agreed to amendments to clarify certain of the bill's provisions and to conform certain requirements with federal law.

This bill is sponsored by the Children’s Advocacy Institute and Just in Time for Foster Youth and is supported by Advokids, Angels Foster Family Network, the California Alliance of Caregivers, the California State University San Marcos Department of Social Work, Children Now, Dependency Legal Services San Diego, East Bay Children’s Law Offices, Los Angeles Dependency Lawyers Inc., Redenbacher & Brown, Straight From The Heart Inc., Sycamores, and The Law Offices of Dale S. Wilson. This bill is opposed by the Consumer Data Industry Association. If this Committee passes this bill, it will next be heard by the Senate Human Services Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Consumer Credit Reporting Agencies Act (CCRA), which requires consumer credit reporting agencies to adopt procedures for meeting the needs of commerce for consumer credit, personnel, insurance, hiring of a dwelling unit, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information. (Civ. Code, div. 3, pt. 4, tit. 1.6, §§ 1785.1 et seq.)
- 2) Defines the following relevant terms:
 - a) “Consumer” means a natural individual.
 - b) “Consumer credit report” means any written, oral, or other communication of any information by a consumer credit reporting agency bearing on a consumer’s creditworthiness, credit standing, or credit capacity, which is used or is expected to be used, or collected on whole or in part, for the purpose of serving as a factor in establishing the consumer’s eligibility for credit, employment purposes, hiring of a dwelling unit, or other specified purposes, subject to specified exceptions.
 - c) “Consumer credit reporting agency” means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the business of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer credit reports to third parties, but does not include any governmental agency whose records are maintained primarily for traffic safety, law enforcement, or licensing purposes. (Civ. Code, § 1785.3.)
- 3) Authorizes a consumer to elect to place a security freeze on their credit report by making a request in writing, as specified.
 - a) A “security freeze” means a notice placed in a consumer’s credit report, subject to certain exceptions, that prohibits the consumer credit reporting agency from releasing the consumer’s credit report or any information from it without the express authorization of the consumer.

- b) If a security freeze is in place, information from a consumer's credit report may not be released to a third party without prior express authorization from the consumer.
 - c) A consumer may contact the consumer credit reporting agency and request that the freeze be temporarily or permanently lifted, as specified. (Civ. Code, § 1785.11.2.)
- 4) Defines, for purposes of 5)-8), the following relevant terms:
- a) "Protected consumer" is an individual who is (1) under 16 years of age at the time a request for a security freeze is made; (2) an incapacitated person or protected person for whom a guardian or conservator has been appointed; or (3) under the jurisdiction of a county welfare department or county probation department, has been placed in a foster care setting, and is under 16 years of age at the time a request for placement of a security freeze is made.
 - b) "Representative" means a person who provides to a consumer credit reporting agency sufficient proof of authority to act on behalf of a protected consumer; for purpose of a protected consumer who has been placed in a foster care setting, "representative" means a county welfare department or county probation department, or their agent or designee, but does not include a foster parent.
 - c) "Sufficient proof of authority" means documentation that shows that a representative has authority to act on behalf of a protected consumer in a financial matter, as specified. (Civ. Code, § 1785.11.9.)
- 5) Requires a consumer credit reporting agency to place a security freeze for a protected consumer if both of the following occur:
- a) The consumer credit reporting agency receives a request from the protected consumer's representative for the placement of a security freeze, as specified.
 - b) The protected consumer's representative (1) submits the request to the consumer credit reporting agency as specified by the agency; (2) provides to the consumer credit reporting agency sufficient proof of identification of the protected consumer and the representative; (3) provides to the consumer credit reporting agency sufficient proof of authority to act on behalf of the protected consumer; and (4) pays to the consumer credit reporting agency the required fee. (Civ. Code, § 1785.11(a).)
- 6) Provides that once a security freeze has been placed pursuant to 5), a consumer credit reporting agency shall not release the protected consumer's credit report, any information derived from the protected consumer's credit report, or any record created for the protected consumer, unless a security freeze for a protected consumer is removed pursuant to 7). (Civ. Code, § 1785.11.11(e).)
- 7) Provides that a security freeze placed pursuant to 5) can be removed if either of the following occurs:

- a) The consumer credit reporting agency receives a request from a protected consumer or a protected consumers' representative, as specified.
 - b) The security freeze was placed or the record of the protected person was created based upon a material misrepresentation of fact by the protected consumer or the protected consumers' representative. (Civ. Code, § 1785.11.11(f)-(h), (j).)
- 8) Provides that the security freeze placed pursuant to 5) does not apply to specified use of the protected consumer's consumer credit report or credit record, including providing a copy of the credit report to the protected person's representative or specified state agencies or law enforcement acting in specified circumstances. (Civ. Code, § 1785.11.10.)
- 9) Requires a credit reporting agency, upon receipt of a valid police report alleging credit fraud from a consumer, to promptly and permanently block any information that the consumer alleges is fraudulently on their credit report; the agency may unblock the information only if the information was blocked due to a material misrepresentation of fact or fraud by the consumer; the consumer agrees that the block, or portions of the block, was or were in error; or the consumer knowingly obtained goods or services as a result of the blocked transactions. (Civ. Code, § 1785.16(k).)
- 10) Requires a credit reporting agency, when unblocking information pursuant to 9), to comply with specified requirements in the CCRA and the FCRA relating to investigating disputed information; additionally, the agency must accept the consumer's version of the disputed information and correct or delete the disputed item when the consumer submits specified documentation to the agency, unless the agency, in the exercise of good faith and reasonable judgment, has substantial reason based on specific facts to doubt the veracity of the authenticity of the documentation and informs the consumer of the basis for the decision. (Civ. Code, § 1785.16(l).)
- 11) Establishes that the juvenile court has jurisdiction over:
 - a) A child who is subject to abuse or neglect. (Welf. & Inst. Code, § 300.)
 - b) A child, when that child has committed acts that trigger delinquency jurisdiction rendering the child a ward. (Welf. & Inst. Code, §§ 601, 602.)
 - c) Any nonminor dependent, between the age of majority and 21 years, under specified conditions. A nonminor dependent under the jurisdiction of the juvenile court retains their legal decision-making authority as an adult, except as specified. (Welf. & Inst. Code, §§ 303, 388(e).)
- 12) Defines "nonminor dependent" for purposes of 1)(c) as a current foster youth or a nonminor under the transition jurisdiction of the court who is between 18 and 21 years old, turned 18 years old while under an order of foster care placement, is in

foster care under the responsibility of the county welfare department, county probation department, or Indian Tribe, and is participating in a transitional independent living plan, as specified. (Welf. & Inst. Code, § 11400(v).)

- 13) Requires, for a child in foster care aged 14 years of age and each year thereafter, while the child is under the jurisdiction of the juvenile court, the county welfare department, county probation department, or CDSS, if an automated process is available, to inquire of each of the three major credit reporting agencies as to whether the child has any consumer credit history, and provide the child with assistance in interpreting the credit report and resolving inaccuracies, as specified. (Welf. & Inst. Code, § 10618.6(a), (c).)
- 14) Requires, for a nonminor dependent, the county welfare department or county probation department to assist the young adult, on a yearly basis while the nonminor dependent is under the jurisdiction of the juvenile court, with requesting the consumer credit report from each of the three major credit reporting agencies and provide assistance with interpreting the consumer credit report and resolving any inaccuracies. (Welf. & Inst. Code, § 10618.6(b), (c).)

Existing federal law:

- 1) Establishes the Fair Credit Reporting Act (FCRA), which regulates consumer reporting agencies, with the intent of requiring that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information. (16 U.S.C., tit. 15, ch. 41, subch. III, §§ 1681 et seq.)
- 2) Provides that, except as provided in 3), the FCRA does not annul, alter, affect, or exempt any person subject to those laws from complying with the laws of any state law with respect to the collection, distribution, or use of any information on consumers, or for the prevention or mitigation of identity theft, except to the extent that those laws are inconsistent with federal law, and then only to the extent of the inconsistency. (16 U.S.C. § 1681t(a).)
- 3) Provides that no state law may impose requirements or prohibitions with respect to any subject matter related under specific federal Code sections, including the federal requirements relating to security freezes set forth in 4) and 5). (16 U.S.C. § 1681t(b)(1)(J).)
- 4) Establishes procedures by which a credit reporting agency must place a security freeze on the files and credit records of a consumer, in response to a direct request from the consumer. (16 U.S.C. § 1681c-1(i).)

- 5) Establishes procedures by which a credit reporting agency must place a security freeze on the files and credit records of a protected consumer, in response to a request from the representative of a protected consumer; a protected individual is a person who is under the age of 16 at the time the request for the placement of a security freeze is made, or who is incapacitated and for whom a guardian or conservator has been appointed. (16 U.S.C. § 1681c-1(j).)

This bill:

- 1) Provides that, if a request for the placement for a security freeze is for a protected consumer who has been placed in a foster care setting, the credit reporting agency shall deem the requirements of providing sufficient proof of identification of the protected consumer and the representative, and of providing sufficient proof of authority to act on behalf of the protected consumer, to be met if:
 - a) The request is verifiably from a county welfare department, a county probation department, or CDSS; and
 - b) The requesting entity provides sufficient proof of the protected consumer's identity under the FRCA.
- 2) Provides that a county welfare department, county probation department, or CDSS does not have the authority to request a security freeze for a protected consumer placed in foster care that continues beyond the protected consumer's 18th birthday.
- 3) Provides that a security freeze requested under 1) shall be deemed to expire on the protected consumer's 18th birthday.
- 4) Provides that, if a credit inquiry received by a credit reporting agency pursuant to a request from a social worker, probation officer, or CDSS under Welfare and Institutions Code section 10618.6 indicates that a child who has been placed in a foster care setting has a consumer credit history:
 - a) Any information that appears on the protected consumer's credit report shall be promptly blocked and not reported, in the same manner as if the agency had received a police report pursuant to Penal Code section 530.5.
 - b) The credit reporting agency shall promptly and permanently block reporting any information identified as fraudulent, and comply with unblocking requirements, in accordance with Civil Code section 1785.16(k) and (l).
- 5) Provides that, with respect to a protected consumer for whom a security freeze has been placed under 1), the freeze shall automatically expire on the protected consumer's 18th birthday unless the consumer, either directly or through their representative, instructs the credit agency to maintain the freeze beyond that date.

- 6) Provides that, notwithstanding 5), a security freeze may be removed after the protected consumer's 16th birthday upon the request of a representative of the protected consumer.
- 7) Includes a severability clause.

COMMENTS

1. Author's comment

According to the author:

Foster youth are especially vulnerable to having their identities stolen due to the large number of people who have access to their personal information. Each time a foster child changes placements, additional individuals gain access to their information, including their social security number. It is estimated that at least fifteen percent of foster youth become the victims of identity theft. Children have always been an attractive target for identity thieves because their credit reports are clean and are often left unmonitored for many years, providing ample time to cause substantial damage to the child's credit. Once a foster youth reaches 14, or if they come into the system after the age of 14, current law requires county welfare departments to check with the three credit bureaus to see if a credit report exists. Because children should not have credit reports, the existence of a report is likely the result of fraud. If a report does exist, social workers must provide foster youth with information and assistance to fix credit inaccuracies. However, our current laws only come into play after a youth has been victimized. AB 2935 seeks to prevent identity theft in the first place by requiring the credit bureaus to automatically freeze an individual's credit reports when they receive an inquiry from a county welfare department regarding a foster youth. Placing the automatic freeze will prevent nefarious actors from being able to open accounts in a child's name.

2. Foster youth and nonminor dependents are uniquely vulnerable to credit fraud

The whole system of consumer credit – understanding it, building it, making sure it's accurate – can be daunting. Children and youth who have spent a significant amount of time in the foster system, and who may have been moving from location to location without a stable caregiver, are be left especially vulnerable to the harms that can result from inadequate credit education, including credit fraud. As explained by one of the bill's sponsors, the Children's Advocacy Institute:

Foster youth are at particularly high risk of identity theft and credit problems due to the large number of people with access to their personal information, including Social Security numbers. This includes the parents from whom the

child was removed, as well as caseworkers, foster parents, and group home providers. Each time a foster child changes placement, additional individuals gain access to their private information. More than a third of California's foster children in foster care for two years have experienced three or more placement changes, significantly increasing the child's vulnerability to identity theft.

Foster youth who "age out" of foster care with their credit in a shambles often unfairly bear the responsibility for crippling debt, including mortgages, utility bills, medical bills, tax debt, and credit card debt, through no fault of their own. They may also face legal problems resulting from the fraudulent acts of those who have stolen their identity. Most of these youth at 18 or 21 years of age are unqualified and incapable of navigating the credit reporting world on their own.

Worse, credit reports are routinely checked for housing, employment, and private education loans. The persistent theft of foster child identities means that foster children under our care will – on top of all of their many other challenges – have a far harder time obtaining housing, gainful employment, and education when they are on their own between the ages of 18 to 21 than children who were not raised under our care.

To help foster children and youth avoid being sent into the world with damaged credit through no fault of their own, state law requires the child's social worker or probation officer, beginning when a child in foster care reaches their 14th birthday, and annually thereafter, to inquire from each of the three major credit reporting agencies as to whether the child or youth has a consumer credit history.¹ The social worker or probation officer must assist the child or youth with interpreting their credit report and any inaccuracies, which may include referring them to a governmental or nonprofit agency that provides consumer credit services.² For nonminor dependents – who, at the age of 18 or older, can request their own credit history – their social worker or probation officer must assist them in requesting their credit reports on an annual basis, and in obtaining assistance with any inconsistencies contained in the reports.³

3. The overlapping state and federal consumer credit reporting regimes

Consumer credit is regulated at both the federal and state level. At the federal level, the FCRA governs some aspects of consumer credit reporting and is intended to "ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy."⁴ At the state level, the CCRA governs consumer credit reporting

¹ Welf. & Inst. Code, § 10618.6(a). If an automated process is available, CDSS shall make the inquiry and report the results to the social worker or probation officer.

² *Id.*, § 10618.6(c).

³ *Id.*, § 10618.6(b), (c).

⁴ *Safeco Ins. Co. of America v. Burr* (2007) 551 U.S. 47, 52; see 15 U.S.C. §§ 1681-1681x.

agencies with the goal of ensuring those agencies “exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy.”⁵

The FCRA provides that states may regulate some, but not all, subject matter in the field of consumer credit reporting also covered by the FCRA. The default is that state laws are not preempted by the FCRA unless they are inconsistent with the FCRA, stating that except as specifically provided, the FCRA:

...does not annul, affect, or exempt any person subject to the provisions of [the FCRA] from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, or for the prevention or mitigation of identity theft, except to the extent that those laws are inconsistent with any provision of [the FCRA], and then only to the extent of the inconsistency.⁶

This broadly permissive position has many specific exceptions, however, which provide that “[n]o requirement or prohibition may be imposed under the laws of any State...with respect to any subject matter related under” specific provisions of the FCRA.⁷ One such provision relates to the imposition of security freezes.⁸

Relevant to this bill is the FCRA and the CCRA’s respective provisions for security freezes on the consumer credit report of a “protected consumer.” Specifically, both the FCRA and the CCRA permit the representative of a “protected consumer” – defined as a person under 16 years of age at the time the request is made, or a person who is incapacitated or for whom a guardian or conservator has been appointed⁹ – to request a security freeze of the protected consumer’s credit and credit record, provided that the representative furnishes sufficient proof of their authority to act on behalf of the protected consumer.¹⁰ Both regimes permit, for a protected person placed in a foster care setting, a written communication from a county welfare or probation department (together, a CWD), or their agent or designee, certifying that the protected consumer is in a foster care setting under its jurisdiction to serve as sufficient proof of authority to act on behalf of the protected person.¹¹ And currently, both regimes provide that the

⁵ Civ. Code, § 1785.1; *see generally id.*, §§ 1785.1-1785.36.

⁶ 15 U.S.C. § 1681t(a).

⁷ *Id.*, § 1681t(b)(1).

⁸ *Id.*, § 1681t(b)(1)(F); *see id.*, § 1681c-1(i), (j).

⁹ *Id.*, § 1681c-1(j); Civ. Code, § 1785.11.9(a). The State definition also includes, in the definition of “protected person,” a person who is “[u]nder the jurisdiction of a county welfare department or county probation department, has been placed in a foster care setting, and is under 16 years of age at the time a request for placement of a security freeze is made” (Civ. Code, § 1785.11.9(a)(3); because this still requires the person to be under 16 years of age, this is subsumed within the broader federal definition.

¹⁰ 15 U.S.C. § 1681c-1(j); Civ. Code, § 1785.11.11. If the protected consumer does not yet have a credit file, the agency must create a file in order to place the freeze. (15 U.S.C. § 1681c-1(j)

¹¹ 15 U.S.C. § 1681c-1(j)(1)(F)(iv); Civ. Code, § 1785.11.9(f)(5).

requested freeze stays in place until the protected consumer's representative, or the protected consumer if they are over 16 years of age, request the removal of the freeze.¹²

4. This bill streamlines and strengthens the security freeze and freeze-lifting process for youths and nonminor dependents in the foster system

This bill is intended to improve the CCRA's protections for foster youth and nonminor dependents, by modifying the existing security freeze process for freezes placed for foster youth at the request of a CWD, or CDSS on behalf of a CWD, as well as requiring that those freezes lift automatically when the foster youth turns 18 years of age.

With respect to the existing request procedure, the bill provides that, when a credit agency's report indicates that a foster child or youth has a consumer credit history, the credit agency must block and not report the information in the same manner as if the agency had received a report of credit fraud under specified CCRA and Penal Code provisions. This blocking requirement reflects the fact that, as minors, foster children and youth should not have credit activity, so any such activity almost certainly indicates that they are the victims of fraud. By automating the blocking process, foster children and youth will avoid the complex and intimidating process of addressing credit fraud on their own. Additionally, the bill clarifies when a credit agency shall deem a request from a CWD on behalf of a foster youth to satisfy the CCRA's authentication requirements.

With respect to the lifting of a credit freeze placed by a CWD, this bill provides that such a freeze lifts automatically on the foster youth's 18th birthday (when they make the transition from foster youth to nonminor dependent). If a credit freeze is in place when the youth turns 18 years of age, they will not be able to begin building credit, which is essential for obtaining housing and other of life's necessities. By automating the removal of the freeze, this bill is intended to ensure that nonminor dependents begin building their credit as soon as possible; the bill permits, however, a freeze to be kept in place at the request of a foster youth (when they are 16 years of age or older) or the CWD. The consumer credit agency could use any method available to it to ensure that the freeze expires on the youth's 18th birthday absent such a request.

The author has agreed to amendments to clarify certain provisions and to address some of the potential preemption concerns, discussed below in Part 5. The amendments are set forth in Part 6.

¹² 15 U.S.C. § 1681c-1(j)(4); Civ. Code, § 1785.11.11(f). Both laws also permit a freeze to be removed if it was placed based on a material misrepresentation of fact by the protected consumer or their representative; that provision is not relevant to this bill. (15 U.S.C. § 1681c-1(j)(4)(A)(iii); Civ. Code, § 1785.11.(j).)

5. Preemption questions

The Supremacy Clause provides that the laws of the United States take precedence over state laws.¹³ Accordingly, federal law may specify whether, and to what extent, it preempts state laws regulating the same subject matter.¹⁴ When a federal statute contains an express preemption clause, the determination of whether a particular state act is barred by the clause depends on “the question of the substance and scope of Congress’ displacement of state law.”¹⁵ “Invoking some brooding federal interest or appealing to a judicial policy preference should never be enough to win preemption of a state law; a litigant must point specifically to a ‘constitutional text or a federal statute’ that does the displacing or conflicts with state law.”¹⁶

Instead, “the purpose of Congress is the ultimate touchstone in every preemption case,” which “primarily is discerned from the language of the preemption statute and the statutory framework surrounding it...Also relevant, however, is the structure and purpose of the statute as a whole, as revealed not only in the text, but through the reviewing court’s reasoned understanding of the way in which Congress intended the statute and its surrounding regulatory scheme to affect business, consumers, and the law.”¹⁷ Any preemption analysis “begins with the assumption that the historic police powers of the States are not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress...That assumption applies with particular force when Congress has legislated in a field traditionally occupied by the States.”¹⁸

As discussed in Part 3 of this analysis, the FCRA contains a partial preemption clause, including a provision stating that state laws “relating to any subject matter” covered by specific FCRA provisions, including provisions “relating to security freezes.”¹⁹ The Consumer Data Industry Association (CDIA), writing in opposition, argues that this provision renders “anything dealing with credit freezes at the state level” – including this bill and *all* state credit freeze laws – “became preempted by federal law.” The CDIA, however, does not cite any case law for its sweeping preemption argument, and Committee staff were unable to locate any case law holding that the FCRA’s security freeze provision entirely displaces state law.

Guidance from the federal Consumer Financial Protection Bureau (CFPB) also indicates that the preemption analysis is not as straightforward as the CDIA claims. In 2022, the CFPB issued an interpretive rule clarifying the preemptive scope of the FCRA, stating

¹³ U.S. Const., art. VI, cl. 2.

¹⁴ *Altria Group, Inc. v. Good* (2008) 555 U.S. 70, 76.

¹⁵ *Ibid.*

¹⁶ *Virginia Uranium, Inc. v. Warren* (2019) 587 U.S. 761, 767.

¹⁷ *Medtronic v. Lohr* (1996) 518 U.S. 470, 485-486 (cleaned up).

¹⁸ *Altria Group, supra*, 555 U.S. at p. 77.

¹⁹ 18 U.S.C. § 1681t(b)(1)(J).

that the preemption provisions “have a narrow and targeted scope.”²⁰ Under the guidance, “State laws that are not ‘inconsistent’ with the FCRA – including state laws that are more protective of consumers than the FCRA – are generally not preempted.”²¹ In support of its interpretation, the guidance cites a federal Circuit Court case rejecting CDIA’s argument that all state statutes relating to information contained in consumer credit reports are preempted, even though the FCRA states that the FCRA’s preemption clause extends to subject matter regulated in “section 1681c of [the FCRA], relating to information contained in consumer credit reports.”²²

It is an open question whether a court would rule that this bill’s provisions are preempted by federal law. As explained in Part 4, this bill appears to be a modest law that “reflect[s] emerging problems affecting [California’s] citizens,”²³ namely, the challenges faced by California’s foster youth and nonminor dependents.

6. Amendments

As noted in Part 5, the author has agreed to amend the bill to clarify certain provisions and to conform the bill more closely to the requirements of the FCRA. The amendments are set forth as follows, with additions in bold and underline and deletions in strikethrough, subject to any nonsubstantive amendments the Office of Legislative Counsel may make:

Amendment 1

Modify paragraphs (2) and (3) of subdivision (a) as follows:

(2) **(A)** If the request for the placement or removal of a security freeze is for a protected consumer who has been placed in a foster care setting, the credit reporting agency shall deem the requirements of clauses (ii) and (iii) of subparagraph (B) of paragraph (1) to have been met if the request is verifiably from a county welfare department, **or** a county probation department, **or the designee pursuant to subparagraph (B)**, ~~the State Department of Social Services, as described in subdivision (a) of Section 10618.6 of the Welfare and Institutions Code,~~ and the requesting entity provides sufficient proof of identification under 15 U.S.C. Sec. 1681c-1(j)(1)(G). ~~The **A** county welfare department, **or** a county probation department, ~~or the State Department of Social Services~~ shall not have the authority to request a security freeze for a protected consumer placed in foster care that continues beyond the protected consumer’s 18th birthday. A security freeze requested under this paragraph shall be deemed to expire on the protected consumer’s 18th birthday.~~

²⁰ The Fair Credit Reporting Act’s Limited Preemption of State Laws (87 Fed. Reg. 41042-01, 41043 (Jul. 11, 2022)).

²¹ *Ibid.*

²² *Consumer Data Industry Association v. Frey* (1st Cir. 2022) 26 F.4th 1, 6.

²³ See The Fair Credit Reporting Act’s Limited Preemption of State Laws, *supra*, 87 Fed.Reg. at 41044.

(B) For purposes of this paragraph, the State Department of Social Services shall be considered the designee a county welfare department or county designee. The credit agency shall deem the requirements of clause (iii) of subparagraph (B) of paragraph (1) to have been met if the request is verifiably from the State Department of Social Services.

(3) If ~~a request an inquiry~~ received pursuant to **paragraph (2)** ~~subdivision (a) of Section 10618.6 of the Welfare and Institutions Code~~ indicates that **the protected consumer** ~~a child who has been placed in a foster care setting~~ has a consumer credit history, any information that appears on the protected consumer's credit report shall be promptly blocked and not reported, in the same manner as if the agency had received a police report pursuant to Section 530.5 of the Penal Code. The credit reporting agency shall also comply with subdivisions (k) and (l) of Section 1785.16, regarding the **protected consumer** ~~child who has been placed in a foster care setting~~.

Amendment 2

Modify paragraph (2) of subdivision (j) as follows:

(2) ~~(A)~~ With respect to a **security freeze placed for a** protected consumer ~~for whom a security freeze has been placed~~ under paragraph (2) of subdivision (a), the freeze **may be removed at the request of the representative of the protected consumer, or by the protected consumer if the protected consumer is 16 years of age or older at the time they make the request. If no such request is received, the freeze** shall automatically expire on the consumer's 18th birthday **pursuant to paragraph (2) of subdivision (a)** unless the **protected** consumer, ~~either directly or through their representative,~~ instructs the agency to maintain the freeze beyond that date.

~~(B) Notwithstanding subparagraph (A), a security freeze may be removed upon the request of the representative of the protected consumer who has been placed in a foster care setting after the protected consumer's 16th birthday.~~

7. Arguments in support

According to Dependency Legal Services San Diego:

As the Department of Social Services correctly observes, "minors should not have a credit report."⁵ However, while exact numbers are hard to ascertain, between half and 15% of all of California's abused and neglected foster children become victims of identity theft...

AB 2935 starts from the same premise as the Department of Social Services above: minors should not have credit reports, period. Starting from that premise, AB 2935 would enact the following:

- If a credit freeze request verifiably comes from the county welfare department, county probation department, or the State Department of Social Services, this bill would deem the requirements for the placement or removal of a security freeze for a foster youth to be met.
- If an inquiry received by one of those entities indicates that the foster child who should not have a credit report at all actually has a consumer credit history, the bill would require the credit bureau to promptly and permanently block reporting any such information on the consumer's credit report because it is presumptively fraudulent. Under current law, the simple submission of a copy of a police report by a consumer triggers a requirement for the bureaus automatically to block listed information from being reported as presumed fraud. The same is true here, given that children should not have reports at all.
- The bill would require the freeze to automatically expire on the foster child's 18th birthday unless the child instructs the bureau to maintain the freeze beyond that date directly or through their representative. The bill also would permit the freeze to be removed at the request of the representative of a protected consumer placed in a foster care setting after the protected consumer's 16th birthday.

Please, let's help our foster children simply by making it easier to remedy the consequences of a crime committed against them on our watch by enacting AB 2935 (Maienschein).

8. Arguments in opposition

According to the Consumer Data Industry Association:

A safe and sound credit economy needs a reliable credit reporting system that also protects consumers and our most vulnerable populations from identity theft. This is why Congress included language in the Economic Growth, Regulatory Relief, and Consumer Protection Act (the "EGRRCPA") of 2018 to create national credit freezes for adults and minors. The law contains a national, free credit freeze; and a national credit freeze for protected persons (for persons under 16 years of age and incapacitated adults)...

The preemption analysis remains the same regardless of whether a state security freeze law was enacted before the EGRRCPA became law, during the period between when FCRA § 625(b)(1)(J) is enacted and is effective, or after FCRA § 625(b)(1)(J) takes effect. In short, when the EGRRCPA became effective, all state credit freeze laws looking backward and all state legislation looking forward no longer had or will have legal effect.

We support your goal to assist foster children and our industry has continued to work towards protecting this vulnerable population. We are committed to working with county welfare departments, county probation departments and the Department of Social Services to ensure that foster children have their information protected. However, AB 2935 does not provide sufficient protection for the authentication of a child's information when a freeze is placed. Additionally, automatically removing a credit freeze for all foster children at age 18, has the potential to allow family members and friends the opportunity to take advantage of the youth's credit history. We believe it is essential that the foster youth have the sole discretion to determine whether the removal of a freeze is prudent. Finally, while we have made suggestions to improve the bill, any changes to the placement or removal of a credit freeze we still believe is preempted by federal law.

SUPPORT

Children's Advocacy Institute (co-sponsor)
Just In Time for Foster Youth (co-sponsor)
Advokids
Angels Foster Family Network
California Alliance of Caregivers
California State University San Marcos Department of Social Work
Children Now
Dependency Legal Services San Diego
East Bay Children's Law Offices
Los Angeles Dependency Lawyers Inc.
Redenbacher & Brown
Straight From The Heart Inc.
Sycamores
The Law Offices of Dale S. Wilson

OPPOSITION

Consumer Data Industry Association

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 90 (Valladares, 2021) would have revised the definition of a protected consumer, for purposes of the CCRA, to include individuals under the jurisdiction of a county welfare department or a county probation department who have been placed in foster care and

are under 18 years of age at the time the security freeze request is made (up from 16 years of age). AB 90 died in the Assembly Banking and Finance Committee.

AB 2748 (Fong, 2020) would have revised the definition of a protected consumer, for purposes of the CCRA, to include individuals under the jurisdiction of a county welfare department or a county probation department who have been placed in foster care and are under 19 years of age at the time the security freeze request is made (up from 16 years of age). AB 2748 died in the Assembly Privacy and Consumer Protection Committee.

PRIOR VOTES:

Assembly Floor (Ayes 71, Noes 0)
Assembly Appropriations Committee (Ayes 15, Noes 0)
Assembly Human Services Committee (Ayes 6, Noes 0)
Assembly Banking and Finance Committee (Ayes 9, Noes 0)
