

To: Economic Affairs Committee
SJR 38 Identity Theft Work Group

From: Bob Pyfer
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Subject: Comments for March 15 Work Group Meeting

Date: March 14, 2006

Once again I regret not being able to attend in person for medical reasons. However, I would like to offer a few brief comments on behalf of credit unions, addressing certain of the meeting agenda items, as follows:

Security Freeze Proposals—

I have not seen the actual bill drafts but I have reviewed the Key Areas comparison table prepared by Pat Murdo. Generally speaking I believe credit unions, as consumer owned financial cooperatives, would be supportive of a workable security freeze bill as one tool to help consumers avert identity theft. We also believe it would be reasonable to allow time to see if the security alert provisions of the federal FACT Act will have the desired affect. I have attached a copy of a paper entitled “Emerging State Issue—ID Theft” from a state issues subcommittee of our Credit Union National Association. The August 2005 paper lays out the pros and cons of security freeze/ credit freeze legislation on the second page in a concise fashion.

Our main concerns with security freeze legislation would be: 1) any operational problems for credit unions; and 2) user friendliness for consumers. At this point we detect no particular operational problems for credit unions. For consumers, we would support clearly stated statutory procedures for placement and removal of the freeze and a plain language model statement of rights and procedures that would be supplied to consumers. I apologize for not rounding up the actual bill draft proposals with sufficient time to do this analysis in advance of the meeting, but we would expect to review all drafts with these considerations in mind. We would not likely take a position on the fees to be charged or response time frames, as we are not privy to relevant data, except to say that providing no charge to consumers is probably not realistic. There will be costs to the process, which will ultimately be picked up by consumers in general if not by the actual users of the service.

Victim Assistance, Remediation, and Accountability—

We would be supportive of legislation to provide for a civil private right of action against perpetrators as well as negligent parties to reimburse consumers and other innocent parties, including credit unions and other financial institutions that incur identity fraud losses. We feel very strongly that there needs to be better internal controls and accountability for third party merchants and merchant card processors. Credit unions and their member-owners can end up bearing the cost of a data breach by a third party

processor. Millions in losses were caused last spring when a major merchant card processor in Texas suffered a data breach. The attached CUNA “Emerging State Issue” paper (third page) references a credit union in Pennsylvania that had to absorb the cost of issuing 21,300 new credit cards after a security breach by a third part vendor. Also attached is a March 8 article from the Wall Street Journal describing the magnitude of the card security problem in merchant card processing—“Only 17% of 231 large merchants have complied with card-industry guidelines ...”

Section 7 of House Bill 732 from last session (now section 30-14-1704, MCA) should be helpful. In addition to requiring notification of a data breach to the consumer, it also requires notification to the “owner” of information if the business having the data breach doesn’t own the information. Presumably, this notification to owner would require a third party processor to notify the financial institution. (California Credit Union League staff indicate they believe this language, drawn from California law, does require such notification). However, the language should be revised to better clarify who will be notified and the content of the notification. Guidelines stated in the attached CUNA “Emerging State Issue” paper (last page) suggest the notice should state:

- *when the breach occurred
- *identification of the third party in control of the compromised information at the time of the breach
- *which accounts are affected; and
- *details on the type of information compromised.

The CUNA guidelines also call for reimbursement of the consumer or financial institution by the breaching party. A private civil action would have a deterrent effect on future breaches and encourage compliance with industry standards by merchants and third party processors, all for the ultimate protection of consumers and efficiency of the consumer financial payment system. We would therefore like to see these accountability measures incorporated in any future legislation.

Funding Options for Consumer Education—

Credit unions are committed to reaching out to our members with information on how to avoid being victimized by fraud or identity theft. This is being done through credit union member newsletters, flyers, statement stuffers, and financial literacy workshops. Our association sends out a weekly electronic newsletter to our affiliated credit unions. Virtually every week, we include new information or resources for credit unions to pass on to there members on how to avoid consumer fraud. So we are already committing resources to the cause. Our charitable arm, called “Montana Credit Unions for Community Development” is continually applying for grants to fund consumer education efforts, utilizing our own staff or credit union staff as instructors, as well as partnering with various private and governmental agencies. We can supply more information on these consumer education outreach efforts on request, and we will cooperate in any way we can in this important overall effort.

Thank you for this opportunity to provide input.