



May 10, 2006

Chairman Jim Keane and Members
Economic Affairs Interim Committee
Montana Legislature
P.O. Box 201706
Helena, MT 59620-1706

Re: Issues in a Montana security freeze bill

Dear Representative Keane and members,

Consumers Union, the non-profit independent publisher of *Consumer Reports*®, appreciates this opportunity to comment on specific issues facing the Interim Committee as it works to develop a security freeze choice for Montana consumers. Seventeen states now offer the security freeze to consumers, and three more state bills need only a Governor's action to become law. Most of those states make the security freeze available to all consumers.

Several state laws have improved the basic security freeze with additional methods to place the freeze, shorter time periods to lift the freeze, reduced fees associated with the freeze, and similar changes. You have an opportunity to include some of these improvements in your bill for Montana's consumers. These comments address specific issues which may be under discussion by the Interim Committee.

Certified mail would be an unnecessary imposition on Montana consumers

Ease of use for a security freeze will be good for both consumers and businesses. The easier the freeze is to place, the more available it will be for consumers who choose to use it to prevent new account identity theft, the most expensive type of ID theft for both consumers and businesses.¹

A requirement of certified mail to place the freeze was widely but unwisely copied from the initial California statute. A certified mail requirement imposes extra cost and inconvenience on consumers without a corresponding benefit. Certified mail requires going to a Post Office, usually standing in line for a clerk, and paying an additional fee of \$2.40 per letter. Younger consumers in particular may have had no experience with using certified mail.

¹ According to a 2003 FTC Study, new account identity theft and fraud causes an average \$1,180 monetary loss for identity theft victims of "new account and other fraud." This is seven times higher than the average loss of \$160 for ID theft victims due to the misuse of existing accounts. Loss to businesses from new accounts identity fraud is nearly five times higher than the loss associated with the misuse of existing accounts. (\$10,200 average business loss for new account fraud, \$2,100 average business loss for identity theft misuse of existing accounts.)

The consumer reporting agencies (CRAs) have asserted the certified mail is a security feature, but the facts don't bear this out. There is no monetary incentive for an imposter to place a freeze, because the freeze narrows access to the credit file. The asserted reason for requiring certified mail is that someone such as an ex-spouse might maliciously place a freeze. We have seen no evidence that ex-spouses are in fact attempting to misuse the freeze in those states that already have it. If this did occur, the consumer could correct it promptly, when the notice and PIN is sent to the real consumer right after the freeze is placed.

A certified mail requirement doesn't add security, because the Post Office does not require a showing of identification to send a certified letter, and does not require that such letters be sent only from a Post Office in proximity with the consumer's home address. A certified letter can be sent by anyone, from any Post Office. Instead of making all consumers who wish to use the freeze to use only certified mail, a better approach would be to permit placement by regular mail and by secure electronic means, and then provide a criminal penalty, damages, or both for the malicious placement of a security freeze on the credit file of another person.

Ease of use requires access to placement methods other than mail

Consumers Union strongly agrees with the proposal of the Montana Attorney General for section 2 of your draft that consumers should be able to place a security freeze using regular mail or a secure electronic method. Consumers can get their statutory free credit report online, and CRAs sell expensive credit monitoring services online. Regardless of the method of sending the request for a freeze, a freeze law can require that the CRA obtain evidence of the requestor's identity.

Other states are providing consumers additional means to place a freeze beyond certified mail. Connecticut law permits placement by other secure method in addition to certified mail. The new Utah law allows placement by regular or certified mail, as well as by an electronic method (fax, Internet, or other electronic means selected by the CRA) and telephone.² The Attorney General's proposal would give CRAs one year after the effective date of the Act to make available a secure electronic method to request a freeze, making the time frame quite similar to what the CRAs already will have to do under these other state laws.

Other state legislatures, including Minnesota and South Carolina, are considering improvements in the ease of placing the security freeze. Bills are pending in both states to add an electronic method to the choices available to the consumer for placing a freeze.

A shorter time to place the freeze is of special importance to identity theft victims and consumers whose data has been the subject of a security breach

The Attorney General has proposed an important improvement to a security freeze for ID theft victims. In connection with Section 3 of your draft, the Attorney General has proposed that when an identity theft victim or a consumer who has received a notice of a security breach requests a freeze, then that freeze should be placed within 24 hours. This proposal would allow persons at heightened risk – whose personal information has just been stolen – to get the freeze in place before a thief turns that data into

² This law goes into effect Sept. 1, 2008.

credit for the thief and headaches for the consumer. It would also allow victims to stop ongoing impersonators from opening any more new accounts as quickly as possible. ID thieves who open new accounts often open more than one account in the name of the same consumer. According to the Federal Trade Commission, 69% of new account fraud ID theft victims had more than one account opened in their name, and 15% of such victims had five or more new accounts opened in their names. The Attorney General's proposal for a shorter time period to place the freeze for ID theft victims responds to these realities.

The law should include a fast method and time to lift the freeze

The Montana Attorney General suggests, for section 4 of the draft, that Montana's residents be able to temporarily lift or "thaw" a freeze by any of these means: mail, phone, or a secure electronic method. The Attorney General also proposes that Montana consumers should get the benefit of short time periods to lift a freeze when short time periods are offered to consumers in other states. This proposal will be good for consumers and for merchants who make sales on credit, and Consumers Union supports it.

Texas law already permits consumers to lift a security freeze by phone. Delaware and New York currently have bills that would allow the lift to be made by phone, the Delaware bill would also permit a lift by mail, telephone or secure electronic mail.

Utah has enacted a law requiring CRAs to offer a secure electronic method to lift a security freeze within 15 minutes. This requirement goes into effect Sept. 1, 2008. New Jersey law requires regulations to require that there be a method to lift the freeze as quickly as possible, with a goal of 15 minutes from the consumer's request. State legislatures in California, Minnesota and Delaware are considering provisions to allow their residents to lift the freeze within 15 minutes, and the New York legislature has a bill to require regulations for a 15 minute lift.

Montana should join the states that are making the security freeze easier and faster to use for their consumers.

Fees should be low, known at the time of placement of the freeze, and waived for people with a notice of a security breach, a police report, an investigative report, or a complaint to law enforcement

Consumers need the choice to place a security freeze largely because of the conduct of others: thieves who steal their information, businesses and government from whom information is stolen, and creditors who choose to grant credit without the level of screening that would sift out imposters.

Because consumers need the freeze protection as a result of the actions of others, the fees should be kept low. Consumers Union supports the fee structure proposed by the Montana Attorney General, of a \$3 administration fee paid up front by everyone except ID theft victims, and no other fees except for a lost PIN fee.

Other states are choosing to deviate from the \$10 fee found in the initial California law and many other state laws. For example, Colorado's law allows all residents to freeze their files at no cost the first time. New Jersey law allows all residents to place the security freeze on their credit files for free, with a \$5 for

the use of the freeze. Some states have also required the security freeze to be free for older residents. For instance, Louisiana provides the freeze for free for residents over the age of 62.

Minnesota's bill requires a \$5 fee for placement, lifting or removing the freeze, except for identity theft victims who would obtain the freeze for free. New York's bill would make the first request to place a freeze free, with subsequent requests at \$5.

The Attorney General's proposal for a single low fee is a sensible one, and we urge you to adopt it.

Restricting the effect of the freeze to the extension of credit would undermine the freeze

The draft language before the Committee on the definition of the security freeze (Section 1, definition 5) will work. However, one of the changes proposed by CDIA to that language would create a significant loophole in the effect of the freeze. CDIA proposed defining the security freeze as a notice that prohibits the CRA from releasing the consumer's credit report or score "relating to the extension of credit." This language should not be included in your draft, because it could create a loophole so that the freeze would not apply when a thief is attempting to open an account for services, such as cell phone service, cable service, or a utility account. These accounts are a significant form of ID theft.³

Identity thieves do open new non-credit accounts, such as phone and utility accounts, in the names of consumers. The Federal Trade Commission's January 2006 report on identity theft statistics showed that consumers made more complaints about identity thieves opening fraudulent new accounts fraud for wireless (cell phone), regular phone accounts, and utility accounts than for new credit card accounts. In 2005, new credit card account ID theft totaled 15.6% of ID theft complaints; while wireless, phone and utility new account opened by thieves together totaled 19.7% of ID theft complaints.

Consumers Union strongly recommends that you do not restrict the definition of, or the effect of, the security freeze to the extension of credit. This would significantly undermine the protective value of the freeze. If there are specific uses that should be exempt, those exemptions should be narrowly crafted and included in the exemptions section at the end of the bill, not folded into the definition of the security freeze.

Montana consumers who make a complaint to law enforcement but cannot get a copy of the police report should not be penalized

Victim's advocates have told Consumers Union that consumers continue to report difficulties in getting a police report, even in states where state law requires that a report be taken. One reason for this is that the location of the perpetrator often is not known, or the perpetrator is known to reside outside the jurisdiction. Many state freeze laws address this by allowing a consumer to show victim status using a copy of a police report, investigative report (such as a state DMV report), or copy of a complaint the consumer has filed with a law enforcement agency. Illinois, Maine, Nevada, and North Carolina, for

³ The restrictive language on the extension of credit is not part of the California statute, which CDIA previously testified before this Committee should be the basis for a Montana freeze law.

example, take this approach. Texas also defines a victim to include a person who has filed a complaint with a law enforcement agency.

Consumers Union recommends that section 10 permit consumers to qualify for the no-fee status conferred on ID theft victims if the consumer provides “a copy of a valid police report, investigative report, or complaint to a law enforcement agency, or evidence of notice of a security breach.” This would allow consumers to who are already victims of ID theft to use this provision even if their local police department refused to take a report. It would also ensure that consumers who can show their notice of a security breach would also qualify.

Exemptions, if any, must be limited to the purpose for which they are designed

We understand that the insurance industry is seeking an exemption for all regulated insurers. We do not believe that any such exemption is necessary. While impersonating someone to get insurance may be more likely to involve fraud for purposes of avoiding the thief’s driving record than to take advantage of the consumer’s credit record, an exception that covered insurance agents would be far too broad, creating the potential for wide access to an otherwise frozen file at multiple insurance agency locations. An exception that covered all insurers also would be too broad. If an insurer exemption is considered, it should be tied to uses for the business of insurance, and it should avoid an implication that the exception authorizes the use of credit information in insurance for any purposes for which it is not presently authorized.

It is particularly important that if the Committee includes an insurance exemption, it restrict that exemption to “for purposes of engaging in the business of insurance which are otherwise permitted by law.” Language such as this would prevent an insurer exemption from exempting insurers who decide to go into the consumer reporting business, becoming CRAs rather than only insurance users of consumer credit information. This language would also leave to other law the appropriateness of using consumer credit information in making decisions about insurance pricing or other aspects of the insurer’s relationship with the customer.

Consumers Union also supports other aspects of the Attorney General’s proposal, including the lift for a specific party. Consumers Union appreciates the opportunity to share these views with you, and to work with you toward crafting a security freeze bill that will work for Montana consumers.

Very truly yours,

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