Warming up to Credit Freeze Laws: The Case of Utah

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The high-profile personal information data breaches of 2005 drew considerable public attention to the growing crime of identity theft. In order to equip consumers with tools for ID theft prevention, several states enacted credit freeze laws. Originating in California in 2001, these types of laws allow consumers to have more control over who can access their credit reports by placing a "freeze" on their records.

There has been substantial debate regarding the merits of credit freezes. The credit reporting industry sees this process as unnecessary and "overkill," touting their own fraud alerts services as sufficient to protect consumers. Consumer advocates, however, view these laws as one of the strongest protections consumers can have against abuse of their personal credit information.

This study advances understanding of credit freeze laws by exploring the main arguments for and against them and detailing the history of Utah's unique credit freeze law. This study identifies the key factors that aided the law's passage in 2006 despite having failed in 2005. This is accomplished through interviews of individuals directly involved with the passage of the law in 2006 and relevant literature in periodicals and government reports. The discussion of Utah's law emphasizes the differences between it and credit freeze laws passed in other states as well as proposed national legislation. Finally, this study speculates on the future of credit freeze laws in Utah and nationally.

The passage of Utah's law with its unique 15-minute freeze feature has created an intriguing situation for other states and the credit industry. It has in essence drawn a line in the sand — for other states, the credit bureaus, and the federal government — to cross over or retreat from in determining national policy regarding the future of credit freeze laws.

INTRODUCTION

In the 2006 Utah legislative session, lawmakers concluded a two-year struggle to determine whether a "credit freeze" would become a viable identity theft prevention option for Utah's consumers. The goal of this legislation was to limit third-party access to a consumer's credit information to only consumer-designated vendors. In doing so, the law would potentially prevent criminals from committing the most common type of identity theft – the opening of fraudulent credit accounts and loans. This type of legislation has become increasingly common in the wake of high-profile data breaches in such private and public organizations as ChoicePoint, the Department of Veteran's Affairs, and DSW shoe warehouse. Utah's law also contained a 15-minute, credit "thaw" feature that established this law as particularly unique. Making this "thaw" part of the bill was instrumental in gaining enough support to pass the legislation. Utah's law is being heralded as a template for other states but now all state credit freeze laws are being threatened by national legislation that could preempt these state laws.

In this paper, I will explain what credit freeze laws are and the main arguments for and against them. I will then relate the history of Utah's credit freeze law focusing on the key factors that aided its passage in 2006 despite having failed in 2005. In the course of this discussion, I will emphasize the differences between Utah's law and credit freeze laws passed in other states and proposed national legislation. Finally, I will forecast the probable future of credit freeze laws in Utah and nationally.

The type of legislation that I will be discussing has been alternately called a credit freeze and a security freeze in the media, research and in the legislation. For consistency I will use the term "credit freeze" throughout the paper except where the term "security freeze" is used in a direct quotation.

IDENTITY THEFT & CREDIT FREEZES

The definition of what constitutes identity theft plays an important part in how legislation is crafted to prevent and prosecute it. According to the Fair Credit Reporting Act (FCRA) of 2001, "the term 'identity theft' means a fraud committed using the identifying information of another person, subject to such further definition as the Commission may prescribe, by regulation". This definition, part of the 2003 amendments to the Act, only applied to crimes after they were committed. Since this amendment to the FCRA, the definition has been further amended by the Federal Trade Commission (FTC) in Regulation 16 part 603, to include the "attempt to commit fraud." This addition has opened the door for prosecution against those who steal personal information before they use it fraudulently. This focus on prevention has also encouraged lawmakers to adopt strong laws aimed at limiting unauthorized access to personal information.

Items of personal information that are commonly stolen include legal names, social security numbers, bank account numbers, and credit information, such as card and account numbers. Using this information, criminals are able to perpetrate several types of crimes. Typically, these are divided into crimes involving the use of existing credit cards or credit card numbers, use of existing non-credit card accounts or account numbers, and the creating of new fraudulent accounts. Credit freezes are designed to prevent this last form of identity theft by making it impossible for criminals to use a consumer's stolen information to gain a new fraudulent account.

There is great deal of variance when it comes to quantifying the number of victims who have had their identities stolen and used to establish fake accounts. This variance is due to several challenges in collecting data. First, many victims of identity theft are not typically aware that they are victims for months, or even years. Secondly, consumers who do have their identities stolen are often victims of multiple types of fraud. Even the most conservative estimates show that identity theft is a common and costly crime. In 2004, a Bureau of Justice Statistics report claimed that 3,589,100 households reported that they discovered they were a victim of some form of identity theft in the last six months. Of these incidents, 538,700, or 15% of reporting households, involved the creation of new fraudulent accounts (Baum, 2006). An FTC survey of 4057 citizens found that 4.7% of those interviewed had been a victim of identity theft in the last 5 years in which their information was used to create a new fraudulent account. The findings of the survey also suggest that nearly 3.25 million Americans are victimized in this type of crime yearly (Synovate, 2003, p. 4). It is apparent from these statistics that a significant portion of identity theft crimes are committed by creating new accounts.

Identity theft is also a very costly crime. The most common types of fraud, opening fraudulent accounts and unauthorized use of existing accounts, directly involve the pilfering of consumers' funds. According to the FTC's survey:

> "On average, victims of "New Accounts & Other Frauds" ID Theft indicated that the person or persons who misused the victim's personal information had obtained money or goods and services valued at $10,200 using the victim's information. This result suggests that the total loss to businesses, including financial institutions, from this type of ID Theft was $33 billion in the last year (Synovate, 2003, p. 5)."

Furthermore, identity theft is also very costly for consumers to correct, not only in dollars but in time. The FTC estimates that "on average, victims of the 'New Accounts and Other Frauds' form of ID Theft spent 60 hours resolving their problems," suggesting that nearly 194 million hours were spent in total (Synovate, 2003, p. 6).

Credit or credit freeze laws are specifically designed to address forms of identity theft involving the creation of new accounts. The typical credit freeze law follows a simple model; Consumers place a freeze on their reports, thereby limiting access to the report by creditors. Credit bureaus are required to unfreeze the report at the request of the consumer. After providing some type of security code, the report is unfrozen or thawed for a specific period of time or for a specific creditor. The thawing and freezing typically is done at a reasonable cost to the consumer. In essence, any potential criminal armed with an individual's information would not be able to create a fraudulent account because the reports would be frozen and the criminal would not have the access code to thaw them.

Credit Freeze Legislation in Response to National Data Breaches

In the wake of the large ChoicePoint and LexisNexis data breaches of 2005, a frenzy of lawmaking within the individual U.S. states produced various credit or credit freeze laws. In fact, many bills addressing identity theft had been or were in the process of becoming laws at the time of these breaches. Identity theft laws are not entirely new. Federal laws making identity theft illegal have been in effect since the 1998 passage of the Identity theft and Assumption Deterrence Act. But the sheer scale of the breaches caused something of a panic and the public outcry turned these incidents into catalysts for stronger and more prolific legislation. These incidents raised awareness of the issue and revealed the large hole in policy related to identity theft. Most prominently, issues concerning the notification requirements surrounding such breaches and possible future preventative measures became the focus of debate. In the years after the initial incidents, many states, including Utah, passed their own notification requirements and credit freeze laws as preventative measures.

Prior to the data breaches of 2005, only California and Texas had freeze laws in effect, though several other states had laws under consideration (see Fig 1.1). The first credit freeze law was passed in California in 2001 in combination with another law specifying the terms in which businesses were to disclose breaches and losses of personal information (U.S. PIRG). The law served as a model for laws to come and was the standard by which consumer notification of the LexisNexis and ChoicePoint breaches occurred. Within a year of these high-profile breaches, 23 states had passed laws mandating the terms of credit freezes and 34 states had laws specifying data breach notifications (U.S. PIRG). Currently, there are 45 states with notification laws and 26 states with credit freeze laws.

The speed with which the states passed their legislation as well as the general newness of these types of laws, has led to significant differences between the various states' laws. While the general operation of these laws is similar, there are several variable parts of each law. States have all made different decisions regarding the coverage, cost, and the duration of freezes and thaws. The differences in these state laws have a large effect on the preventative ability of a particular law and subsequently, the level and sources of political support. This lawmaking resulted in 26 states which currently have credit freeze laws, some of which are substantially different from one another. This so-called "patchwork" of laws has led the credit reporting agencies, who generally oppose credit freeze legislation, and some national lawmakers to push for a national law preempting the states' laws. Later, I will discuss examples of national laws under consideration and what effect they may have on state laws.

Currently, there is considerable debate regarding the part that credit freeze laws should play in protecting consumers. The three major credit bureaus that produce the vast majority of credit reports are Experian, Equifax, and Transunion. These corporations have typically favored promoting their own identity theft prevention and account monitoring services over any sort of credit freeze legislation. Whereas credit freeze laws only dictate the actions of the three reporting bureaus which collect and maintain the information in credit reports, the notification laws passed along with many credit freeze laws are aimed at both credit bureaus and creditors who buy information from them. How both of these laws are carried out will potentially have a large effect on the security of consumers' personal information and credit.

THE ARGUMENTS REGARDING CREDIT FREEZE LAWS

The largest point of variance among the state laws pertains to who is permitted to place a freeze on their credit information. Currently, 5 of the 26 states with credit freeze laws only allow victims of identity theft to place freezes on their accounts. Washington is the only state that allows credit freezes to consumers on the condition that they are potential victims of identity theft. They must have received notification that their personal information may have been compromised due to a data breach before they can freeze their files (see Fig 1.1).

Opponents of credit freeze cite that only individuals who have been notified that they could be at risk of identity theft need a credit freeze. J. Craig Sherman, vice President for the National Retail Federation, states:

> "Our concern is that the credit freeze issue has become overkill, because most consumers are never going to be the victims of ID theft. If consumers place a credit freeze on their files, it can cause difficulties when trying to purchase homes, cars or even opening simple lines of credit at a department store (Hunt & Arnold, 2006)."

The justification for this view is that the small number of people who do become victims of identity theft (and who discover it and file a report) will be able to prevent further abuse of their information by freezing their account. Credit reporting agencies also will save time and money if they only have to deal with a minimal number of consumers requesting credit freezes.

Proponents of credit freeze laws, in particular those laws that apply to all consumers, feel that by only allowing victims to freeze their reports the purpose of the legislation is defeated. "It's like telling someone that they can't put a lock on their door until someone breaks in and steals their stuff," explained Utah Deputy Attorney General Kirk Torgensen (Torgensen, 2007). Illinois initially passed a credit freeze law that only applied to victims of identity theft but in 2005 amended the law to include all consumers. Michelle Jun, a staff attorney for Consumers Union's Financial Privacy Now campaign, spoke about the benefits of this new amendment:

> "Illinois' security law is stronger than other existing safeguards available to consumers. Federal law allows identity theft victims to put fraud alerts on their credit files, and consumers can pay for credit monitoring services. But this won't erase the damage that has been done by the time they discover their identity has been stolen (Sun-Times News Group, 2007)."

Credit bureaus often tout their fraud alert services as an already existing tool to combat identity theft, but some consumer advocacy groups feel that fraud alerts are not effective preventative measures. In 2003, the Fair and Accurate Credit Transactions Act (FACT Act) was passed and among its effects was the codifying of a system of alerts that consumers could place on their reports (The White House, 2003). The first was an initial report that was placed on a consumer's file for 90 days. It requires creditors to use "reasonable procedures" to protect the consumer from identity theft (Consumers Union, 2003). There is considerable debate as to what "reasonable procedures" entail. This may vary between agencies and depends entirely on the in-house policies of the reporting agencies. There is also an extended alert that will last up to 7 years. In both cases, the procedures required to protect consumers are not detailed. Consumers inquiring about how to use fraud alerts were given the following advice by Maxine Sweet, Experian's vice president of public education. Sweet said,

> "When you are a fraud or identity theft victim, or have good reason to believe you may be, you can request an initial security alert be added to your credit history. The alert tells lenders that you are or may be a victim of identity theft and asks that they take additional precautions before granting credit in your name (Sweet, Ask Max credit advice: Difference between frad alert, victim statement and security freeze, 2005)."

Consumers may add a phone number to this alert so that they may be contacted to approve the issuance of credit in their name. Prior to the FACT Act, credit bureaus were not required to act on these requests and are still only required to "flag" the report though the law does not require lenders to call consumers before releasing a report (Sweet, Ask Max credit advice: Difference between frad alert, victim statement and security freeze, 2005).

Linda Foley of the Identity Resource Center stated in 2005 that fraud alerts have been found by the Center to work only 50%-70% of the time (Foley, 2004). This may be because credit bureaus are not actually heeding the alerts. According to Equifax's (one of the three credit bureaus) "FAQs for Consumers" website:

> "When you, or someone else, attempts to open a credit account the lender should contact you by phone to verify that you want to open the new account. If you cannot be reached by phone, the credit account should not be opened. However, a creditor is not required by law to contact you if you have a fraud alert in place. Fraud alerts can legally be ignored by creditors" [emphasis added] (Equifax).

With fraud alerts as an uncertain tool, a credit freeze seems to be a more reliable and effective alternative. Freezes are also seen as a stronger tool, requiring not just notification of the opening of new accounts but preventing the opening of new accounts without a consumer's explicit permission to do so.

Another point of difference among the state laws deals with the cost of placing freezes and initiating thaws on a consumer's report. Utah's law cites "reasonable fees" to be exacted when consumers are both placing the freeze and temporarily thawing it. Currently, a majority of states are limiting the imposable fees to 10 dollars per credit bureau to institute a freeze and five to 10 dollars per bureau to un-freeze a report (Fig. 1.1). Those states that only allow victims of identity theft to freeze their reports do not charge for this service, with the exception of Texas which limits the fee to a one-time eight-dollar charge that is to be honored by all three bureaus.

Addressing the issuance of fees, the Information Policy Institute explained the purpose of these fees:

> "File maintenance costs are typically offset by selling credit files to those entities with an FCRA defined permissible purpose. Credit files that have been frozen cannot be sold. As such, a reasonable fee structure must take into account the scope of the costs associated with freezing a file—both for the service of the credit file freeze and for the service of account maintenance (Information Policy Institute, 2005)."

This argument assumes that frozen files would have been sold had they not been frozen. It does not take into account that the type of consumer who places a freeze on their file is not likely to seek new accounts frequently. Subsequently, their file would not have likely been sold to any potential creditors. Also, most credit freeze laws (including Utah's) do allow entities approved by the FCRA to update, amend and add reports to frozen files for the purposes of keeping files current. Therefore, the only real cost that is associated with a credit freeze is the manpower and time required to freeze and unfreeze accounts.

Opponents of credit freeze laws have also argued that this type of law may actually mask identity theft from consumers. Experian has also asserted in their advice column that identity thieves are now using credit freezes to lock consumers out of their information. They stated, "Armed with the knowledge that the credit file is frozen, the identity thief uses the stolen identity to commit other types of fraud, effectively masking the identity theft (Sweet, Ask Max credit advice: Frozen credit file interferes with wedding plans, 2005)" This alarmist scenario is likely unwarranted. According to the Information Policy Institute, "…ID thieves are typically detected either by their victims or by the lenders monitoring account activity, the enactment of a rational federal file freeze law [or state law] is not likely to directly impact either of these two detection mechanisms (Information Policy Institute, 2005)." Consumer's will have a PIN number or password that prevents thieves from thawing their file and will still have access to all of their current credit file monitoring rights and services, including a yearly free report from each agency. Further, if consumers do loose their PIN numbers or passwords, or somehow loose access to their account, they can obtain a new one by providing identifying information, such as a driver's license and social security card to the reporting agencies. I was unable to find any documented instances in which a thief was able to mask their crime using a frozen file. Furthermore, it is difficult to imagine a scenario, given the nature of a credit freeze law, in which this deception could occur.

The strongest argument that the credit bureaus may have against credit freeze laws involves the nature of their creation. Specifically, as it stands, states are being allowed to dictate to a large national industry how to conduct its business. These states are doing so with many differing requirements. The so-called "patchwork" of laws has led the credit reporting agencies, who generally oppose credit freeze legislation, and some national lawmakers to push for a national law preempting the states' laws. The implications of these actions will be discussed later in this analysis.

Response to credit freeze laws has been somewhat ambivalent from industries like auto dealers, bankers, retailers, and other business that offer instant credit. These industries rely on a strong and trusting customer base and therefore have a vested interest in keeping their customers by preventing fraud. Further, they face potential losses associated with the purchase of goods on fraudulent accounts. At the same time, the instant lines of credit offered by retailers make up a significant part of their business. Frequently, these retailers offer discounts to consumers who open credit accounts at the checkout line. The auto industry also makes the claim that many of their sales rely on impulse buys, and without instant financing on site, they would lose a portion of their sales. Chris Hoofnagle, the west coast Director of the Electronic Privacy Information Center (EPIC), pointedly described the relationship between these industries and the credit bureaus. He said, "The credit bureaus are creatures that serve the creditors and don't want any slowdown of instant credit (Hunt &

Arnold, 2006)." In the creation of Utah's law, the support of these industries was the deciding factor in persuading lawmakers to adopt the legislation. This support was hard won and relied on a feature of the law that was entirely new and unique to already recognized credit freeze laws.

LEGISLATIVE HISTORY OF UTAH'S CREDIT FREEZE LAW

The creation of Utah's own credit freeze law seemed to happen relatively quickly, only requiring two annual sessions of the legislature. In reality, it was the culmination of several years of research, planning and discussion. The law that was the eventual product of these events was, in comparison to the other states, revolutionary. It has now become a template for other states to follow and may prove to play a considerable role in the formation of national legislation.

The impetus for Utah's credit freeze law came years before the high-profile security breaches of 2005. In October of 2003, the Utah Attorney General's Office held an Identity Theft Summit. Attendees included prosecutors, police officers, bankers, merchants, and legislators. Among the proposals regarding legal action to prevent identity theft was a discussion of credit freeze laws (Consumer Affairs, 2006). Laws in other states, namely California, and those under consideration in Vermont and New Jersey were analyzed to see if they would work in Utah (Torgensen, 2007).

The Deputy Attorney General Kirk Torgensen began working with State Senator Carlene Walker to craft a bill that would protect consumers but also be favorable to business interests. Other stakeholders that worked closely with Senator Walker in promoting the bill included the AARP.

The bill, S.B. 39, produced by this working group, allowed credit freezes for all consumers (not just victims only) and asserted that "reasonable fees" be charged to freeze and unfreeze a file. It also mandated that the thaw could take no longer than 3 days. The implementation date for this legislation was July 1, 2006. Substantively, the body of the bill was similar to California's law and to those being considered by other states at that time.

The bill was introduced to the Utah State Senate on January 17, 2005 and was presented to the Senate Business and Labor Standing Committee on January 31, 2005. At this meeting, Senator Walker explained the nature of the bill assisted by Richard Hamp of the Attorney General's Office. Carter Livingston of AARP Utah and Francine Giani, Director of the Utah State Division of Consumer Protection, spoke in support of the bill during the meeting. Chantele Artman, representing the Consumer Data Industry Association, spoke in opposition to the bill. The bill was recommended to the floor of the Senate by a five to one vote. It is interesting to note that only one individual spoke against this legislation. In future committee meetings for S.B. 71, the bill presented in 2006, more resistance to the law was exhibited by the credit reporting agencies.

Once the bill reached the Senate floor in 2005 there was a small debate on an amendment moving up the effective date of the bill to January 1, 2006 instead of July 1. The date was changed to January and then the next day moved back to July. This last action was done at the request of Senator Walker, who after discussions with the representatives of the credit bureaus, felt that the bureaus would need the extra time to effectively make the necessary adjustments in their business. The Senate voted unanimously to pass the bill without any other changes.

The bill went on to pass favorably out of the House Business and Labor committee, though it was by a much smaller margin – seven to five. At this point, the bill went to the Rules Committee to determine when it would be considered by the House of Representatives at large. According to Senator Walker, Kirk Torgensen, and Laura Polacheck, the Speaker of the House, Greg Curtis was approached by an influential friend and auto dealer with concerns about the bill. At the request of the auto dealer, the bill stayed in the Rules Committee and was not placed on the calendar to be considered during the rest of that legislative session (Polacheck, 2007) (Torgensen, 2007).

Disappointed but not defeated, Senator Walker and members of the Attorney General's Office consulted with the auto dealer's association, as well as the retailers and bankers association to find a way to address the concerns of some members of the business community and still make the bill a strong protection for consumers. During the months in between sessions, these discussions led to some changes to the 2005 bill that would accommodate the concerns of business. The main change being the requirement of the 15 minute thaw.

The biggest complaint from the auto dealers and other merchants was that credit freezing would hamper their business practices. Auto dealers in particular claimed that they relied on providing instant credit to shoppers who bought new cars on "impulse." The dealers also argued that individuals who had car accidents and needed a replacement car would be inconvenienced by having to wait 3 days to unfreeze their credit (Torgensen, 2007). In order to meet these concerns, a 15-minute credit unfreeze or thaw, was inserted as the new standard required by the bill and was eventually numbered S.B. 71. The requirement of a 15-minute thaw was envisioned to take the form of a website or toll free number that consumers could access or call and then present a PIN number or some other form of identification in order to unfreeze their account.

Senator Walker described a meeting in which she presented this change to a group of influential auto dealers. She recalled that after she had explained this new measure that well known auto dealer, Larry H. Miller, told the group that this was an important protection for their customers and the right thing to do. Senator Walker claimed that this was a turning point in gaining support for her bill (Walker, 2006). With this new unfreeze requirement, former enemies of the legislation became allies. "Bankers, realtors, car dealers, and other merchants came together to help us craft a business-friendly plan that gets the job done," said Senator Walker (Walker, 2006). Virtually every other aspect of the law was the same as the 2005 proposal, including the coverage for all consumers and reasonable fees for the service.

S.B. 71 was introduced into the Utah Senate during its 2006 general session on January 23, 2006. It was again heard in the Senate Business and Labor Committee on January 26 with a large contingent of government agencies and businesses speaking in favor of the bill. These proponents included Chris Kyler, CEO of the Utah Association of Realtors; Craig Bikmore from the Utah Auto Dealers Association; Jim Olsen, President of the Utah Retail Merchants Association; and Howard Headlee of the Utah Bankers Association. In total, there were eight individuals there to speak in favor of the bill. Outnumbered were the two lobbyists, Candace Daly and Craig Moody, representing the Consumer Data Industry Association. Not surprisingly, with the support of the business groups, the bill received a favorable recommendation by the committee by a vote of five to one and was sent to the Senate floor for further debate. It was approved by the Senate, again unanimously with an amendment requiring a redundant system that would enable the bureaus to unfreeze records within 15 minutes should their original system fail. They also eliminated routine maintenance as an excuse for not unfreezing records within 15 minutes. These amendments were approved and a substitute bill was introduced to the House.

After being approved in the Senate, the bill needed only to be approved by the House of Representatives before it became law. This bill was being carefully watched by the reporting agencies and their representative organization, the Consumer Data Industry Association. As part of their political strategy, they waited to combat the law if and when it reached the House of Representatives. According to Candace Daly, there was not a lot of access for them to the Utah Senate and they felt that they had a better chance of stopping or at least lessening the impact of the legislation on their industry in the House. In fact, while the bill was in the House, they were able to get all of the amendments to the bill that they sought (Daly, 2007). During the first committee hearing in the House, representatives from the three reporting agencies as well as a representative from the National Association of Credit Management traveled to Utah to speak against the bill in its first House Committee Hearing. Only Senator Walker was able to attend the hearing, leaving only the opponents of the law to testify. Those who spoke against the bill that day were Craig Moody and Chantele Mack; Murray Johnston, Director of State Government Affairs, Experian; Eric Rosenburg, Transunion; Julie Long, Equifax; Scott W. Lee, General Counsel, NCAM Intermountain. Without any other support Senator Walker deferred her comments to another committee meeting when the proponents of the law could speak for it.

On February 17, 2006, the House Business and Labor committee heard testimony again regarding S.B. 71 after it was replaced by the 3rd substitute bill, changing the enactment date of the law. Chris Kyler of the Utah Association of Realtors and Craig Bickmore of the Utah Auto Retailers Association spoke in favor of the bill, with Dean Wangsgarn, President of the National Association of Credit Management, and Candace Daly representing the Consumer Data Industry, speaking against it. The committee approved the bill nine to four and sent it to the floor of the House for a vote. On February 27, two days before the legislative general session adjourned, the bill passed the House unanimously and the Senate concurred unanimously with all of the amendments the next day. S.B. 71 was signed into law by the Governor John Huntsman Jr. on March 20, 2006.

One of the most debated issues during this session was the enactment date of the bill. The original version of S.B 71 had September 1, 2006 as the enactment date with September 1, 2008 as the date that violations of the law could be enforced by the Attorney General. The 2nd Substitute S.B. 71 amended those dates to make the entire bill inactive until September 2007. The 3rd substitute S.B. 71 had extended that date to September 1, 2008. These substitutions were made by Senator Walker and the attorney general's office at the request of the credit bureaus. The credit bureaus reported that they did not have the systems currently available to meet the criteria of the law and would need at least two years to be able to accommodate consumers who wished to freeze their files and unfreeze them according to Utah's statute.

The Senate allowed for the delay in implementation requested by the credit reporting agencies but Senator Walker now regrets that action. "I think we were snookered," said Senator Walker (KUTV News, 2006). By requesting such a large window of time from the passage of the state law until its enactment date, Senator Walker feels that the bureaus were just trying to buy more time to push for national legislation preempting the state's law. In response to Senator Walker's claim, Candace Daly, one of the lobbyists for the Consumer Data Industry Association replied, "That is absolutely not true." She went on to explain that each of the credit bureaus has its own system and cannot share information under collusion and anti-trust laws (Daly, 2007). This means that they will each separately have to develop a system to accommodate for Utah's near instant thaw requirement which will take some time. Deputy Attorney General Kirk Torgensen feels that there may be some legitimacy to the credit bureaus' claim. "We are dictating to them how to run their business," said Torgensen. He acknowledges that the changes necessary to comply with Utah's law could require a large effort. "There are systems that might necessitate development and procedural changes to accommodate the new law's requirements and two years may actually be reasonable (Torgensen, 2007)." Regardless of their motivation for extending the implementation date, the credit reporting agencies been given time to work with the federal government on a consistent national law.

PROPOSED NATIONAL LAWS

The credit bureaus have been strong supporters of national laws that would create a lone statute and preempt state laws already passed, including Utah's law. In fact, several of the laws proposed in the 2006 session of Congress would have eliminated credit freezes altogether. While none of these bills actually passed, they demonstrated that a national standard is likely to be established soon. A review of the proposed national laws reveals the strength of the credit bureau's influence and paints an uncertain picture for the future of Utah's law.

From the inception of new identity theft laws by the states beginning in 2005, there have been arguments for a national, comprehensive law addressing identity security. Norm Magnuson, Vice President of the Consumer Data Industry Association, in January of 2007 stated the following concerning credit freeze laws, "At the start, there was no question we looked at them as problematic. The only thing we're looking for now is consistency (Gelles, 2007)." Think tanks, including the Information Policy Institute also believe that a consistent national standard is the best policy option for both consumers and the credit reporting industry (Information Policy Institute, 2005).

In 2006, Kirk Torgensen and all 50 of the state Attorney General's offices wrote letters urging congress to not preempt their own states legislation when it comes to data security. Currently eight states are in the process of adopting the 15 minute unfreeze including California (Torgensen, 2007) (California Progress Report, 2006). Debra Bowen, the California legislator that sponsored the first credit freeze bill, commented, "now that the credit bureaus are being required to give people in other states the ability to lift a freeze in 15 minutes, it only makes sense to give California shoppers that same right (California Progress Report, 2006)." If California and other states were to adopt the same standard as Utah, a great deal more pressure would be put on the federal government to adopt this same standard as part of any federal legislation. This would achieve the consistency that the consumer data industry desires but will most likely not be embraced by the industry as a large part of their data protection policies. Further, if states do not adopt this same standard quickly, federal legislation may reflect the current standard of three days.

From the bills considered in 2006, it is difficult to determine conclusively what form federal legislation will take. There were five separate bills focused on identity theft that included sections attempting to regulate credit freezes. These were S. 1408, S. 1780, S. 3568, H.R. 4127 and H.R. 3997 (see Fig. 2 for a comparison of these bills). While none of these bills were passed they do provide an interesting look at how polarized views are on credit freezes and how they should be administered, if at all.

Legislation in the Senate including S. 3568 sponsored by Utah's Senator Robert Bennett stalled quickly after being introduced in committee. Meanwhile, the two most prominent bills to be discussed in 2006 were developed by the House Energy and Commerce Committee. These were bills H.R. 4127 and H.R. 3997. Both of these bills are drastically different in how they approach the credit freeze issue. H.R. 3997 would have preempted existing state laws and made credit freezes available only to identity theft victims. This bill, among other statues seen as harmful to consumers, sought to establish a national standard for credit freezes. Consumer advocacy groups were angered by its approval by the committee. "It's shocking that at a time when data breaches are in the headlines daily and consumers are at greater risk than ever [of] identity theft, Congress would choose to vote on a bill that would strip consumers of their existing identity-theft protections, " said Susanna Montezemolo, a policy analyst with Consumers Union (Azulay, 2006). The law would also have weakened the requirements imposed on businesses to disclose security breaches. According to Ed. Mierzwinski, Director of U.S. Public Interest Group's consumer program, "This is the worst data bill ever. It is truly a bad bill (Lazarus, 2006)." Lawmakers who voted in favor of the bill were interested in creating a national standard according to chief author, Rep. Steve LaTourette, a republican from Ohio (Lazarus, 2006). This bill enjoyed strong support from the credit reporting agencies that, according the Center for Responsive Politics, spent nearly 30 million dollars in 2005 on lobbying (Azulay, 2006).

Soon after H.R. 3997 exited committee, H.R. 4127, which was seen to be much more consumer friendly, passed the committee in a unanimous 41-0 vote (Montezemolo & Hillebrand, 2006). This bill would have allowed states to continue enforcing any currently passed state laws concerning fraud. It would also have not made any mandate on the terms of security freezes and required stricter notification requirements in case of security breaches. This bill has been renumbered as H.R. 958 in the 110th session of congress and should come up for consideration this year.

In 2006, the FTC also negotiated the largest civil suit ever – a 10 million-dollar suit against Choice Point in response to its security breach (Montezemolo & Hillebrand, 2006). This, along with the creation of the Consumer Privacy Legislative Forum by several high-tech companies, will provide further attention and pressure on lawmakers to address identity theft concerns (Stevens, 2007). With security freeze cited as a high legislative priority, despite the other priorities like the Iraq war, there is a good chance that the 110th Congress will see further legislation addressing credit freezes and it will be proposed nationally.

FUTURE OF UTAH'S LAW

The future of Utah's law in inextricably tied to the fate of the proposed federal laws. Utah's law will not take effect until September 2008. Until that time comes, Utah lawmakers and the Attorney General's office will have to plan for the implementation and regulation of the new statute including how to notify consumers and encourage them to signup for the service. Other serious questions yet to be answered include how much the freeze will cost Utahans and how to ensure compliance to the new standards by the industries. But at the present time, all eyes are really on Congress to see if all of the effort expended in 2007 will be for naught in 2008.

While the law currently states that "reasonable fees" should be applied, it is still unsure what those fees will be. This will be up to the credit bureaus to determine. One scenario would have Utahan's paying considerable more to freeze their reports because the agencies would charge higher costs to creditors requesting consumers' reports. These higher costs would reflect an effort by the reporting agencies to recoup the costs of implementing a 15-minute thawing system. The cost for the freezes would not necessarily be higher, but the total cost for requesting a report (which is passed on to the consumer in application fees, closing costs, financing charges, etc.) would be higher (Daly, 2007). Without other states adopting the same standard, Utah may end up footing the bill for the new system.

The Attorney General's office will be tasked with regulating how well the credit reporting agencies are complying with the new statutes and will be responsible for bringing any legal action against the credit agencies. Under Utah law, citizens can not directly seek legal redress if they have problems with their credit reports. This prevents consumers from directly seeking damages from the industry in instances where the law was not followed. This is seen to provide some level protection to the industry and allow them to be less strict in their implementation and conduct regarding these new procedures.

One of the biggest questions yet to be answered is what will happen if the reporting agencies are not prepared to provide 15-minute thaws when the law comes into effect in 2008. There is currently some question as to whether each reporting agencies has the resources to develop a system (Daly, 2007) (Walker, 2006). When asked about bringing suit against the credit bureaus, Kirk Torgensen said that his main concern would be situations in which consumers had requested freezes and then they were not applied to their reports. He was not necessarily concerned with how quickly these reports were thawed when requested.

Regardless of the application of the law, the 15-minute thaw would be enforceable by the law and could be subject to a civil suit brought by the Attorney General's Office (Torgensen, 2007). According to Candace Daly, there is a good chance that rather than be sued for violating the law, the reporting agencies will just refuse provide any services to Utah creditors (Daly, 2007). It seems unlikely that the credit reporting bureaus would decide against investing in a freezing/thawing system and then forgo doing business with all of their clients that provide credit in Utah. This seems especially unlikely since Experian, one of the three largest bureaus, has already developed a system. Responding to the passage of the Rhode Island credit freeze bill in July of 2006, Maxine Sweet said that Experian had already "spent many millions developing the system to process these [credit freezes]" and that they could be thawed in 15 minutes (Myers, 2006). While Experian appears ready for Utah's law to come into effect the other agencies may not be as prepared.

As discussed earlier, it is certain that eventually a federal law addressing security freezes will be passed. This may happen soon rather than later. Two scenarios exist that would result in the survival of Utah's law. The first would be the passage of a national law like H.R. 4127 that would allow states to continue to enforce their current statutes. The second would be a national law that adopts the state's current standards, including the 15-minute thaw. This is only a likely scenario if other states, like California, begin to adopt Utah's same standard.

Conclusion

The passage of Utah's credit freeze law demonstrates several important aspects of the legislative approach to preventing identity theft. First, it illuminates the differing interests of consumers, creditors, and the agencies that gather personal financial information. Utah's case proved that compromise on the part of consumer advocacy groups to appease business interests does not have to weaken the protection these laws offer. By adopting the 15 minute thaw, lawmakers were able to make the law more convenient for consumers and palatable to businesses that offer credit. By bringing businesses on board to advocate for the law, Utah lawmakers were able to pass a law that had previously failed and make it more consumer friendly in the process. This consumer-business alliance had the effect, however, of alienating the consumer reporting agencies and may make the implementation of this new law very challenging.

With the passage of Utah's stringent mandate on consumer reporting agencies, Utah has now placed a potential burden upon the entire data reporting industry. The consequences of this action are still to be seen. The law may result in higher costs for consumer credit or even the preemption of this state law by a federal statute. On the other hand, it may prove to be the first step in producing more consumer- and business-friendly freeze laws for the entire nation. State Senator Carlene Walker stated that Utah's credit freeze law "holds water" (KUTV News, 2006). In a state that is viewed as pro-business, this strong consumer legislation has made a statement.

Secondly, the passage of credit freeze laws by many states and the subsequent conflicts with potential legislation expose the fuzzy line between the rights of states to protect their citizens and the responsibility of the federal government to regulate interstate commerce. In light of increasingly common breaches of personal information, states have acted more swiftly than the federal government in providing protective and preventative measures for their citizens. The result has been varying standards with which data reporting agencies must comply. While the agencies and some federal lawmakers have called for a single national standard, actually passing one has been more difficult. Federal lawmakers have been reluctant to undo the work of the states. The hope of Kirk Torgenson and the other proponents of Utah's law is that other states will begin to adopt Utah's standard, thus building a strong case for federal law to adopt the same standard and not preempt the current state laws.

Finally, the passage of Utah's law is only one step in what could be seen as the development of a comprehensive system for preventing identity theft. While consumers have previously borne the responsibility of protecting their information, creditors and data reporting agencies are beginning to bear more of the burden. Credit freeze laws are examples of this shift in responsibility. The arguments nationally and within the states regarding credit freeze and other privacy-protection laws clearly demonstrate that more discussion is required to find the best solution for all stakeholders, the data reporting industry included.

APPENDICES

Fig. 1 Analysis of State Laws

State	Date Effective	Eligibility	Cost of Freeze	Cost to Temporarily Lift Freeze
California	1/1/2003	Any Consumer	No fee for identity theft victims; $10 for others to freeze at each ($30 total)	$10 for a temporary date-range lift per credit reporting agency ($30 total); $12 ($36 total) to lift for one creditor per agency
Colorado	7/1/2006	Any Consumer	No fee for first freeze; $10 at each credit reporting agency ($30 total) to place a second freeze	$10 to lift temporarily or permanently per credit reporting agency ($30 total); $12 to lift for one creditor per agency ($36 total)
Connecticut	1/1/2006	Any Consumer	$10 to freeze at each credit reporting agency ($30 total)	$10 to lift temporarily or permanently per credit reporting agency ($30 total); $12 to lift for one creditor per agency ($36 total)
Delaware	1/1/03 subsequently amended	Any Consumer	No fee to victims of identity theft.	
Florida	7/1/2006	Any Consumer	No fees for identity theft victims and individuals over the age of 65; up to $10 for others to freeze at each credit reporting agency ($30 total)	$10 to lift temporarily or permanently per credit reporting agency ($30 total)
Hawaii	1/1/2007	Identity Theft Victims Only	No fees	No fees
Illinois	1/1/2006 *Any Consumer after 1/1/2007	Any Consumer	No fees	No fees
Kansas	1/1/2007	Identity Theft Victims Only	No fees	No fees
Kentucky	3/24/2006	Any Consumer	No fees for identity theft victims; $10 for others to freeze at each credit reporting agency ($30 total)	$10 to lift temporarily or permanently per credit reporting agency ($30 total); $10 to have PIN reissued.
Louisiana	7/1/2005	Any Consumer	No fee for identity theft victims or persons age 62 or older; $10 for others to freeze credit at each credit reporting agency ($30 total)	$8 for a temporary lift per credit reporting agency ($24 total)
Maine	2/1/2006	Any Consumer	No fees for identity theft victims; up to $10 for others to freeze at each credit reporting agency ($30 total)	$10 to lift temporarily or permanently per bureau ($30 total); $12 to lift for one creditor per bureau ($36 total)
Minnesota	8/1/2006	Any Consumer	$5 at each credit reporting agency ($15 total)	$5 at each credit reporting agency ($15 total)

Nevada	10/1/2005	Any Consumer	No fees for identity theft victims; $15 for others to freeze at each credit reporting agency ($45 total)	$18 for a temporary lift per credit reporting agency ($54 total); $20 to lift for one creditor per agency ($60 total)
New Hampshire	1/1/2007	Any Consumer	No fees for identity theft victims; up to $10 for others to freeze at each credit reporting agency ($30 total)	$10 to lift temporarily or permanently per credit reporting agency ($30 total)
New Jersey	1/1/2006	Any Consumer	No fee for initial freeze	$5 to remove, temporarily lift or have PIN reissued ($15 total); $5 to lift for one creditor per agency ($15 total)
New York	11/1/2006	Any Consumer	No fees for initial freeze; further freezes $5 at each credit reporting agency ($15 total) to place a second freeze	$5 at each credit reporting agency ($15 total)
North Carolina	12/1/2005	Any Consumer	No fee for identity theft victims; $10 for others to freeze at each ($30 total)	$10 to lift temporarily or permanently per credit reporting agency ($30 total)
Oklahoma	1/1/2007	Any Consumer	No fees for identity theft victims and individuals over the age of 65; up to $10 for others to freeze at each credit reporting agency ($30 total)	$10 to lift temporarily or permanently per credit reporting agency ($30 total)
Pennsylvania	1/1/2007	Any Consumer	No fees for seniors 65+ years old	No fees for seniors 65+ years old
Rhode Island	1/1/2007	Any Consumer	No fees for seniors 65+ years old	No fees for seniors 65+ years old
South Dakota	7/1/2006	Identity theft Victims only	No fees.	No fees.
Texas	9/1/2003	Identity Theft Victims Only	$8 to freeze; placement at one credit reporting agency must be honored by all	No fees to remove
Utah	9/1/2008	Any Consumer	"Reasonable fees"	"Reasonable fees"; Consumer can temporary lift or "thaw" freeze within 15 minutes of electronic request
Vermont	7/1/2005 *Any Consumer after 7/1/2006	Any Consumer	No fees for identity theft victims; up to $10 for others to freeze at each credit reporting agency ($30 total)	$5 at each credit reporting agency ($15 total)
Washington	7/24/2005	Identity Theft Victims Only, Including Consumers Who Receive Notice of Security Breach of Computerized PI	No fees	No fees
Wisconsin	1/1/2007	Any Consumer	No fees for identity theft victims; up to $10 for others to freeze at each credit reporting agency ($30 total)	$10 to lift temporarily or permanently per credit reporting agency ($30 total)

Fig. 2 Proposed Federal Identity Theft Laws 109th Congress (2006) (American Bankers Association, 2006)

Bill	Preemption	Credit freeze	Enforcement	Criminal Penalties
HR 3997 Financial Data Protection Act	Yes- **credit freeze,** data security, notice, mitigation.	Yes – based on VT law, only available to identity theft victims	Functional regulator	No
HR 4127 Data Accountability and Trust Act (renumbered as HR 958 for 110th congress)	Somewhat – does not preempt consumer protection law enforcement by state AG or law dealing with fraud	No	FTC/ State AG/ functional regulators	No
S 1408 Identity Theft Protection Act	Yes – state law on **credit freeze**, data security, notice, liability, and Social Security numbers	Yes – any consumer	Exclusive by functional regulator	No
S 1780 Personal Data Privacy and Security Act	Unclear	No	State AG	Yes
S 3568 Data Security Act (Bennett/Carper Bill)	Yes – data security, investigation, notice and mitigation	No	FTC and functional regulators	No

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