CONSUMER DATA INDUSTRY ASSOCIATION
Empowering Economic Opportunity
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December 12, 2017

The Honorable Jonathon Dever
Chair, Financial Institutions, Housing, and Urban Development
Columbus, OH 43215

Re: Opposition to H.B. 386

Dear Chairman Dever:

I write on behalf of the Consumer Data Industry Association (CDIA) to respectfully request that your committee reject H.B. 386, a bill to require credit bureaus to provide free credit freezes, lifts, and removals for all consumers. We hope your committee will take a step back and consider alternative approached, better suited to fit consumer needs.

We realize that the hearing falls in the wake of the announcement by Equifax that, during a criminal hack of its systems, data on approximately 146 million consumers had been compromised. Yet, requiring credit bureaus to provide free credit freezes – even in the absence of a breach – is not appropriate.

1. Present law and practices:

- Under federal and state law consumers are entitled to:
  - Two free credit reports per year, per credit bureau.
  - Free credit reports for identity theft victims, which can be as many as one free credit report, per credit bureau, every 90 days.
  - Free credit freezes for identity theft victims.
- Under business practices, most breached entities provide to consumers free credit monitoring that often lasts for one year.

2. A credit freeze should not be a consumer's first line of defense

By requiring credit bureaus to offer free credit freezes, the bill implies that a consumer's first response for consumer, or even after receiving a breach notice, is to freeze his or her credit file. While a freeze may be the right response for a victim of identity theft, or for a consumer who is no longer credit active, a freeze is a severe remedy to what might not even be an ailment. The FTC agrees. The Federal Trade Commission wrote in a Sept. 17, 2017 blog posting that

> credit freezes are a powerful tool, but it's not a one-size-fits-all thing. If consumers are about to apply for new credit — for example, a mortgage, car loan, or student loan — they should consider the cost and potential hassle of unfreezing and refreezing each time. But for people who won't need new credit anytime soon, a credit freeze may be a good choice.[1]

For most consumers who are concerned about the possibility of becoming a victim of identity theft, the better solutions are a fraud alert, as provided by federal law, and/or a credit monitoring service. A fraud alert is a free service, required by federal law, where a "business must try to verify a consumer's identity before extending new credit."[2] The FTC has noted that "an initial fraud alert can make it harder for an identity thief to open more accounts in your name."[3] Under the Fair Credit Reporting Act (FCRA), a consumer can obtain an initial alert that lasts for 90-days and can be renewed for an unlimited period. A consumer that is a victim of identity theft can have an extended alert placed on the credit report and that extended alert lasts for seven years.[4]

From our experience, when consumers understand the options in protecting their credit, from fraud alerts to a freeze, most choose to start with a 90-day fraud alert. We believe that fraud alerts are better options for those who want to be cautious and monitor their credit without limiting or cutting off access to their credit report. The Consumer Financial Protection Bureau (CFPB) agrees and recently recommended fraud alerts to those concerned about protecting their personal information.[5]

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[1] *Fraud alerts vs. credit freezes: FTC FAQs*, Fed. Trade Comm., Sept. 17, 2017, https://www.ftc.gov/news-events/blogs/business-blog/2017/09/fraud-alerts-vs-credit-freezes-ftc-faqs.
[2] *Id*.
[3] *Place a fraud alert*, FTC, https://www.consumer.ftc.gov/articles/0275-place-fraud-alert.
[4] 15 U.S.C. § 1681c-1.
[5] Consumer Financial Protection Bureau, *Top 10 ways to protect yourself in the wake of the Equifax data breach*, Sept. 18, 2017. *https://www.consumerfinance.gov/about-us/blog/top-10-ways-protect-yourself-wake-equifax-data-breach/*.

3. Fees for freezes are appropriate for non-ID theft victims

In Ohio, consumers who are victims of identity theft can obtain free credit freezes. Under federal and state law and business practices, consumers are entitled to many credit reports, credit monitoring, and credit freezes for free. This bill represents one free freeze too far.

Credit bureaus are not the breached entity in most cases[6] and they should not be forced to pay to absorb the costs of a breach caused by someone else. The state does not require a burglar alarm company to give away services for thefts in a neighborhood. A $10.00 fee, even multiplying that to $30.00 total, is less expensive than most doctor and pharmacy co-pays.

The freeze fee is low and it is not a profit center. The administrative fee helps to cover the costs of providing the freeze service to consumers, including the maintenance of the technology to implement the freeze system.

4. Conclusion

We realize that the in the wake of the Equifax hack, consumers are looking for ways to protect themselves from becoming victims of identity theft as a result of the Equifax hack or other data breaches. However, requiring credit bureaus to provide free credit freezes is not appropriate. Consumers are entitled to so many free credit reports, credit monitoring, and other services that this bill is one free freeze too far. The fee for freezes is modest for all consumers that do not otherwise qualify for free freezes. The modest fee is not a profit center for credit bureaus, but represents the costs of administering a system established for consumer convenience. We urge your opposition to H.B. 386.

Sincerely,

Eric J. Ellman
Senior Vice President, Public Policy and Legal Affairs

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[6] The largest breaches in history have been, in numerical order of consumers affected, Yahoo!, Adult Friend Finder, eBay, Equifax, Heartland Payment Systems, Target, TJX (TJ Maxx), JP Morgan, U.S. Office of Personnel Management, and Sony's PlayStation Network. Taylor Armeding, *The 16 biggest data breaches of the 21st century*, CSO, Oct. 11, 2017, *https://www.csoonline.com/article/2130877/data-breach/the-16-biggest-data-breaches-of-the-21st-century.html*.

Summary of ID Theft Solutions
in the
Federal Fair Credit Reporting Act (FCRA)
15 U.S.C. Sec. 1681 *et seq.*

- *Free Credit Reports*. Consumers are entitled to one free credit report per year under the following circumstances:
    - When an active duty member of the military places an active duty alert on his credit report. 15 U.S. Code § 1681c-1(c).
    - One free per year, per national credit bureau. 15 U.S. Code § 1681j(a).
    - Any time a consumer receives an adverse action notice. 15 U.S. Code § 1681j(b).
    - One free per year if the consumer is unemployed and seeking employment. 15 U.S. Code § 1681j(c)(1).
    - One free per year if the consumer is on public assistance. 15 U.S. Code § 1681j(c)(2).
    - One per year if the consumer has reason to believe that the file on the consumer at the agency contains inaccurate information due to fraud. 15 U.S. Code § 1681j(c)(3).
    - When a consumer places an initial fraud alert on her credit report, which a consumer can do every 90 days. 15 U.S. Code § 1681j(d).
    - When a consumer places an extended fraud alert on her credit report, which lasts for seven years. 15 U.S. Code § 1681j(d).
- *Tradeline Blocking*. Consumers with an identity theft report, as that term is defined by law, can block from appearing on a credit report, any item that was compromised by fraud that appears on the identity theft report. 15 U.S.C. § 1681c-2.
- *Fraud Alerts and Active Duty Alerts*.
    - Consumers who believe they are identity fraud victims can request that a fraud alert be placed on their credit reports to signal to prospective users of that report that the consumer may be a fraud victim. 15 U.S.C. § 1681c-1.
    - Consumers who are on active military duty away from their duty station may request that an active military duty alert be placed on their credit reports to signal to prospective users of that report that the consumer may be not be the actual applicant for credit. 15 U.S. Code § 1681c–1(c).
- *Social Security Number Truncation*. Consumers may request that consumer reporting agencies truncate their SSNs on credit reports. 15 U.S. Code § 1681g(a)(1)(A).
- *Credit and Debit Card Number Truncation*. Merchants must truncate debit and credit card account numbers on receipts. 15 U.S.C. § 1681c(g) .
- *Establishment of Red Flag Guidelines*. Federal banking agencies and users of consumer reports (i.e. lenders) must establish red flag guidelines to better identify fraud patterns. 15 U.S.C. § 1681m(e) .
- *Summary of Rights*. Consumer reporting agencies must provide to consumers a summary of their rights if they become identity fraud victims. 15 U.S.C. § 1681g(d).
- *Complaint Coordination*. The FTC and national consumer reporting agencies must develop a system to coordinate consumer complaints. 15 U.S.C. § 1681s(f).

- *Prevention of Reappearance of Fraudulent Information.* Companies that furnish data to consumer reporting agencies must develop procedures to prevent the reappearance of data that was subject to fraud. 15 U.S.C. § 1681s-2(a)(6).
- *Debt Collection.* Debt collectors collecting for a third party must, when notified by a consumer that the collection item is the subject of fraud, inform the company for whom the collector is collecting of the alleged fraud. In addition and upon request, the collector must share with the consumer information relative to the debt. 15 U.S.C. § 1681m(g).
- *Statute of Limitations Extension.* The statute of limitations against consumer reporting agencies, and users of information from and furnishers of information to consumer reporting agencies is extended to two years from the date of the discovery of the violation or five years from the date the cause of action arises. 15 U.S.C. § 1681p.
- *Studies on Identity Fraud.* The Treasury Department is required to conduct an identity fraud study. Pub. L. 108-159., Sec. 157.
- *Enhanced Opt-Out from Pre-approved Credit or Insurance Offers.* New easier and simplified method lenders use to inform consumers of their right to remove their names from pre-approved credit or insurance offer lists. In addition, the timeframe for opt-out is extended from two to five years. 15 U.S.C. § 1681m(d).
- *Disposal of Records.* FTC and federal banking agencies to develop rules concerning the disposal of credit records. 15 U.S.C. § 1681w, 16 CFR 682.3.
- *Reporting of Negative Information to Consumer Reporting Agency.* Lenders must inform consumers that negative information may be reported to consumer reporting agencies 15 U.S.C. § 1681w.
- *Enhanced Obligations on Furnishers to Report Accurate Information.* 15 U.S.C. § 1681i(a)(5)(A).
- *Address Reconciliation.* Consumer reporting agencies must notify users of consumer reports about a substantially different address between an address on an application and an address on the credit report. Users must have policies to handle this situation under regulations from federal banking agencies. 15 U.S.C. § 1681c(h).