

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSERT B :

1 AN ACT to create 138.25 of the statutes; relating to: access to consumer credit
2 reports and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of the draft.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 138.25 of the statutes is created to read:

4 138.25 Access to credit reports. (1) DEFINITIONS. In this section:

5 (a) "Business day" means a business day, as defined in s. 421.301 (6), that is not
6 a legal holiday under s. 895.20 or a federal legal holiday.

7 (b) "Consumer report" has the meaning given in 15 USC 1681a (d).

8 (c) "Consumer reporting agency" has the meaning given in s. 15 USC 1681a (f).

1 (d) “Reseller” means a consumer reporting agency that acts only as a reseller
2 of credit information by assembling and merging information contained in a
3 database of another consumer reporting agency or multiple consumer credit
4 reporting agencies, and does not maintain a permanent database of credit
5 information from which new consumer reports are produced.

6 (e) “Security freeze” means a notice included with an individual’s consumer
7 report that indicates that releases of the consumer report are subject to this section.

8 **(2) SECURITY FREEZES.** (a) Except as provided in par. (c), a consumer reporting
9 agency shall include a security freeze with an individual’s consumer report if the
10 individual does all of the following:

11 1. Sends a request by certified mail to an address designated by the consumer
12 reporting agency.

13 2. Provides the consumer reporting agency with proper identification.

14 3. If applicable, pays the fee specified in sub. (9).

15 (b) No later than 5 business days after an individual satisfies the requirements
16 under par. (a) 1. to 3., a consumer reporting agency shall include a security freeze
17 with the individual’s consumer report. No later than 10 business days after
18 including the security freeze with the consumer report, the consumer reporting
19 agency shall send the individual a notice that does all of the following:

20 1. Confirms that a security freeze is included with the individual’s consumer
21 report.

22 2. Includes a unique personal identification number, password, or other device
23 for the individual to authorize release of the consumer report.

24 3. Describes the procedure for authorizing release of the consumer report.

25 (c) Paragraph (a) does not apply to any of the following:

1 1. A reseller, except that if a reseller obtains from another consumer reporting
2 agency an individual's consumer report that includes a security freeze, the reseller
3 shall include the security freeze with any consumer report regarding the individual
4 that the reseller maintains.

5 2. A consumer reporting agency that is a check services or fraud prevention
6 services company which issues reports on incidents of fraud or authorizations for the
7 purpose of approving or processing negotiable instruments, electronic funds
8 transfers, or similar methods of payments.

9 3. A consumer reporting agency that is a deposit account information service
10 company which issues reports regarding account closures due to fraud, substantial
11 overdrafts, automated teller machine abuse, or similar negative information
12 regarding an individual to inquiring financial institutions for use only in reviewing
13 an individual's request for a deposit account at the inquiring financial institution.

14 **(3) PROHIBITION.** Except as provided in sub. (8), if an individual's consumer
15 report includes a security freeze, a consumer reporting agency may not release the
16 consumer report to any person for any purpose related to the extension of credit
17 unless the individual gives prior authorization for the release under sub. (4).

18 **(4) RELEASE AUTHORIZATION.** (a) An individual whose consumer report includes
19 a security freeze may authorize a consumer reporting agency to release the report
20 by doing all of the following:

21 1. Contacting the consumer reporting agency using a point of contact
22 designated by the consumer reporting agency.

23 2. Providing proper identification and the personal identification number,
24 password, or other device specified in sub. (2) (b) 2.

25 3. Specifying the time period for which the release is authorized.

1 4. If applicable, paying the fee specified in sub. (9).

2 (b) If an individual satisfies the requirements under par. (a) 1. to 4., the
3 consumer reporting agency shall release the individual consumer report during the
4 time period specified by the individual, except that a consumer reporting agency is
5 not required to release a consumer report sooner than 3 business days after the
6 individual contacts the consumer reporting agency under par. (a) 1. A consumer
7 reporting agency may establish procedures for releasing consumer reports sooner
8 than 3 business days for individuals who satisfy the requirements under par. (a) 1.
9 to 4. by telephone, facsimile, or the Internet, or by use of other electronic media.

10 **(5) RELEASE OF REPORTS.** A consumer reporting agency may release an
11 individual's consumer report that includes a security freeze if any of the following
12 apply:

13 (a) The individual authorizes the release under sub. (4).

14 (b) The individual requests removal of the security freeze under sub. (6).

15 (c) The consumer reporting agency included a security freeze with the
16 consumer report due to a material misrepresentation of fact by the individual, if the
17 consumer reporting agency notifies the individual in writing about the
18 misrepresentation before the consumer reporting agency releases the consumer
19 report.

20 **(6) REMOVING SECURITY FREEZES.** (a) An individual may request removal of a
21 security freeze included with the individual's consumer report by doing all of the
22 following:

23 1. Contacting the consumer reporting agency using a point of contact
24 designated by the consumer reporting agency.

1 2. Providing proper identification and the personal identification number,
2 password, or other device specified in sub. (2) (b) 2.

3 3. If applicable, paying the fee specified in sub. (9).

4 (b) If an individual requests removal of a security freeze under par. (a), the
5 consumer reporting agency shall remove the security freeze from the individual's
6 consumer report no later than 3 business days after the individual satisfies the
7 requirements under par. (a) 1. to 3. and the consumer reporting agency's release of
8 the report is no longer subject to this section.

9 **(7) THIRD PARTIES.** (a) If a 3rd party requests access to an individual's consumer
10 report that includes a security freeze, the request is made in connection with the
11 individual's application for an extension of credit, and the consumer reporting
12 agency is prohibited under this section from releasing the report to the 3rd party, the
13 3rd party may treat the individual's application as incomplete.

14 (b) This section does not prohibit a consumer reporting agency from advising
15 a 3rd party that an individual's consumer report includes a security freeze and that
16 the consumer reporting agency must obtain the individual's authorization before
17 releasing the individual's consumer report.

18 **(8) EXCEPTIONS.** This section does not apply to an individual's consumer report
19 that a consumer reporting agency releases to, or for, any of the following:

20 (a) 1. a. A person with whom the individual has, or had prior to assignment,
21 an account or contract, including a demand deposit account; or a person to whom the
22 individual issued a negotiable instrument; for the purpose of reviewing the account
23 or collecting the financial obligation owing for the account, contract, or negotiable
24 instrument.

25 b. A subsidiary, affiliate, or agent of a person specified in subd. 1. a.

1 c. An assignee of a financial obligation owing by the individual to a person
2 specified in subd. 1. a.

3 d. A prospective assignee of a financial obligation owing by the individual to
4 a person specified in subd. 1. a. in conjunction with the proposed purchase of the
5 financial obligation.

6 2. For purposes of subd. 1. a., "reviewing the account" includes activities related
7 to account maintenance, monitoring, credit line increases, and account upgrades and
8 enhancements.

9 (b) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person
10 to whom the individual has authorized release of the consumer report under sub. (4).

11 (c) Any state or local agency, law enforcement agency, court, or private
12 collection agency acting pursuant to a court order, warrant, or subpoena.

13 (d) A child support agency acting pursuant to 42 USC 651-669b.

14 (e) The state or its agents or assigns acting to investigate fraud or acting to
15 investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its
16 other statutory responsibilities.

17 (f) The use of credit information for the purposes of prescreening as provided
18 under 15 USC 1681b (c).

19 (g) A person administering a credit file monitoring subscription service or
20 similar service to which the individual has subscribed.

21 (h) A person for the purpose of providing an individual with a copy of his or her
22 consumer report upon the individual's request.

23 (i) An insurer ~~licensed~~ ^{that} to do business in this state ~~who~~ uses the consumer report
24 in connection with the underwriting of insurance.

authorized

1 **(9) FEES.** (a) Except as provided in par. (b), a consumer reporting agency may
2 charge an individual a fee of no more than \$10 each time that the individual requests
3 a security freeze under sub. (2), authorizes release of a consumer report under sub.
4 (4), or requests removal of a security freeze under sub. (6).

5 (b) A consumer reporting agency may not charge a fee to an individual who
6 submits evidence satisfactory to the consumer reporting agency that the individual
7 made a report to a law enforcement agency under s. 943.201 (4) regarding the
8 individual's personal identifying information or a personal identifying document. A
9 copy of a law enforcement agency's report under s. 943.201 (4) is considered
10 satisfactory evidence for purposes of this paragraph.

11 **(10) INFORMATION CHANGES.** (a) Except as provided in par. (b), if a consumer
12 reporting agency includes a security freeze in an individual's consumer report, the
13 consumer reporting agency may not change the individual's name, date of birth,
14 social security number, or address in the report unless, no later than 30 business
15 days before or after changing the information, the consumer reporting agency sends
16 written notice of the change to the individual. If the notice concerns a change of
17 address, the consumer reporting agency shall send the notice to both the new and
18 former address.

19 (b) Notice is not required under par. (a) for changing abbreviations for names
20 or streets, correcting spelling, transposing numbers, or making other technical
21 changes.

22 **(11) NOTICES.** Whenever a consumer reporting agency is required to provide
23 an individual with a notice under 15 USC 1681g regarding consumer rights under
24 the federal credit reporting law, the consumer reporting agency shall also provide the
25 individual with the following notice:

1 “Wisconsin Consumers Have the Right to Obtain a Security Freeze.

2 You have a right to include a “security freeze” with your credit report, which will
3 prohibit a consumer reporting agency from releasing information in your credit
4 report without your express authorization. A security freeze must be requested in
5 writing by certified mail. The security freeze is designed to prevent credit, loans, and
6 services from being approved in your name without your consent. However, you
7 should be aware that using a security freeze to take control over who gets access to
8 the personal and financial information in your credit report may delay, interfere
9 with, or prohibit the timely approval of any subsequent request or application you
10 make regarding a loan, credit, mortgage, investment, cellular phone, utilities,
11 Internet credit card transaction, or other services, including an extension of credit
12 at point of sale.

13 When you request a security freeze for your credit report, you will be provided
14 a personal identification number or password to use if you choose to remove the
15 security freeze from your credit report or authorize the release of your credit report
16 for a period of time after the security freeze is in place. To provide that authorization
17 you must contact the consumer reporting agency and provide all of the following:

- 18 (1) The personal identification number or password.
- 19 (2) Proper identification to verify your identity.
- 20 (3) The period of time for which the report shall be made available.
- 21 (4) Payment of the appropriate fee.

22 A security freeze does not apply to a person or its affiliates, or collection
23 agencies acting on behalf of a person, with which you have an existing account, that
24 requests information in your credit report for the purposes of reviewing or collecting
25 the account. Reviewing the account includes activities related to account

1 maintenance, monitoring, credit line increases, and account upgrades and
2 enhancements.

3 Unless you are a victim of identity theft with a police report to verify the crime,
4 a consumer reporting agency has the right to charge you no more than \$10 to include
5 a security freeze with your credit report, no more than \$10 to authorize release of a
6 report that includes a security freeze, and no more than \$10 to remove a security
7 freeze from your credit report.”

8 (12) ENFORCEMENT; RULES. (a) The division of banking shall enforce this section.

9 (b) The division of banking shall promulgate rules specifying what constitutes
10 proper identification for purposes of subs. (2) (a) 2., (4) (a) 2., and (6) (a) 2. The rules
11 shall be consistent with any requirements under federal credit reporting law
12 pertaining to proper identification.

13 (13) DAMAGES. Any person who obtains a consumer report from a consumer
14 reporting agency, requests a consumer reporting agency to include or remove a
15 security freeze in a consumer report, or authorizes a consumer reporting agency to
16 release a consumer report that includes a security freeze, under false pretenses or
17 in knowing violation of this section or federal law, shall be liable to the consumer
18 reporting agency for actual damages sustained by the consumer reporting agency or
19 \$1,000, whichever is greater.

20 **SECTION 2. Effective date.**

21 (1) This act takes effect on January 1, 2007.

22

(END)

END OF
INSERT B

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3364/2dn

MDK: *KJF*

Date

Rep. Fitzgerald:

This version is based on the instructions you provided. As with any instructions that are based on another state's law, it was necessary to make many changes to conform to our drafting style. In particular, please note the following:

1. I'm not sure how to reconcile the telecommunications industry's concerns about the definition of "consumer reporting agency" with the instruction to incorporate the definition under federal law. If a telecommunications company does things that meet the definition under federal law, then the telecommunications company is subject to the bill. However, note that under proposed s. 138.25 (8) (a) 1. b., a consumer reporting agency is allowed to share information with affiliates for the purpose of reviewing or collecting accounts.

X 2. Regarding private collection agencies, don't they qualify for the exemption that applies to an agent who is allowed to obtain a report for the purpose of making collections? See proposed s. 138.25 (8) (a) 1. a. and (1) b. In addition, if a private collection agency is acting under a subpoena, it would qualify for the exemption in proposed s. 138.25 (8) (c). In any event, I don't think the definition of "private collection agency" that you forwarded to me is necessary. If you disagree, please let me know.

3. Does proposed s. 138.25 (8) (i) satisfy your intent regarding insurers?

X 4. The term "proper identification" is used, but not defined, in 15 USC 1681h (a) (1). Therefore, I did not include the definition proposed in the instructions. Instead, this version requires DFI to promulgate rules on what constitutes "proper identification" and requires the rules to be consistent with federal law.

5. Under our drafting rules, substantive provisions should not be included in definitions. Therefore, I did not include all of the definition of "security freeze" that is included in the instructions. Instead, I removed the substantive provisions from the definition and placed them elsewhere in the draft. See, for example, proposed s. 138.25 (3).

X 6. The draft requires a consumer reporting agency to do all of the following within ^{ten} 10 days after including a security freeze with a consumer report: 1) send a confirmation of the security freeze; 2) provide a PIN, password, or other device; and 3) describe the

procedures for authorizing release of the report. Is that okay? (The instructions aren't clear on whether the ~~10~~^{ten}-day deadline should apply to all of the foregoing.) Also note that the draft (as well as the instructions) do not specify **how** a consumer reporting agency should send the foregoing to an individual. Do you want to revise the draft to require, for example, sending the foregoing by mail?

7. Proposed 138.25 (4) (b) makes changes to the ~~3~~^{three}-day deadline in the instructions. Note that the instructions require a consumer reporting agency to comply with a request to lift a freeze within ~~3~~^{three} days. However, what if an individual specifies a time period that does not occur until after the ~~3~~^{three}-day deadline? In that case, I'm not sure how a ~~3~~^{three}-day deadline applies to the consumer reporting agency.

8. This version (and the instructions) require a consumer reporting agency to release a report that is "frozen" when contacted by an individual, but do not require a particular type of contact. See proposed s. 138.25 (4) (a) ¹. As a result, any sort of contact may be used (for example, telephone, regular mail, electronic mail, or web site visit). Is that okay?

9. The instructions include an exception for releasing reports to subsidiaries, etc., for facilitating the extension of credit or for "other permissible use". Proposed s. 138.25 (8) (b) is intended to correspond to this exception. I don't think it's necessary to refer to extensions of credit because the bill only applies to releases of reports for extensions of credit and the bill does not apply to releases for any other use that is permitted under federal law. See proposed 138.25 (3). As for "other permissible use", I'm not sure what that means, so I did not include it. What constitutes an "other permissible use"?

10. I deleted the reference to permissible uses under 15 USC 1681b in the exception for state investigations of fraud, etc., because it is redundant to include under state law a limitation that applies under federal law.

11. Regarding the reference to "within 30 days" under "Information Changes" in the instructions, I assume that means "no later than 30 days before **or** after". See proposed 138.25 (10)(a). Is that okay?

12. Regarding "Freezes; False Pretenses" in the instructions, I'm not sure what the reference to "permissible purpose" means and I did not include it. See proposed 138.25 (13).

Mark D. Kunkel
 Senior Legislative Attorney
 Phone: (608) 266-0131
 E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3364/2dn
MDK:kjf:jf

November 17, 2005

Rep. Fitzgerald:

This version is based on the instructions you provided. As with any instructions that are based on another state's law, it was necessary to make many changes to conform to our drafting style. In particular, please note the following:

1. I'm not sure how to reconcile the telecommunications industry's concerns about the definition of "consumer reporting agency" with the instruction to incorporate the definition under federal law. If a telecommunications company does things that meet the definition under federal law, then the telecommunications company is subject to the bill. However, note that under proposed s. 138.25 (8) (a) 1. b., a consumer reporting agency is allowed to share information with affiliates for the purpose of reviewing or collecting accounts.
2. Regarding private collection agencies, don't they qualify for the exemption that applies to an agent who is allowed to obtain a report for the purpose of making collections? See proposed s. 138.25 (8) (a) 1. a. and b. In addition, if a private collection agency is acting under a subpoena, it would qualify for the exemption in proposed s. 138.25 (8) (c). In any event, I don't think the definition of "private collection agency" that you forwarded to me is necessary. If you disagree, please let me know.
3. Does proposed s. 138.25 (8) (i) satisfy your intent regarding insurers?
4. The term "proper identification" is used, but not defined, in 15 USC 1681h (a) (1). Therefore, I did not include the definition proposed in the instructions. Instead, this version requires DFI to promulgate rules on what constitutes "proper identification," and requires the rules to be consistent with federal law.
5. Under our drafting rules, substantive provisions should not be included in definitions. Therefore, I did not include all of the definition of "security freeze" that is included in the instructions. Instead, I removed the substantive provisions from the definition and placed them elsewhere in the draft. See, for example, proposed s. 138.25 (3).
6. The draft requires a consumer reporting agency to do all of the following within ten days after including a security freeze with a consumer report: 1) send a confirmation of the security freeze; 2) provide a PIN, password, or other device; and 3) describe the

procedures for authorizing release of the report. Is that okay? (The instructions aren't clear on whether the ten-day deadline should apply to all of the foregoing.) Also note that the draft (as well as the instructions) do not specify *how* a consumer reporting agency should send the foregoing to an individual. Do you want to revise the draft to require, for example, sending the foregoing by mail?

7. Proposed 138.25 (4) (b) makes changes to the three-day deadline in the instructions. Note that the instructions require a consumer reporting agency to comply with a request to lift a freeze within three days. However, what if an individual specifies a time period that does not occur until after the three-day deadline? In that case, I'm not sure how a three-day deadline applies to the consumer reporting agency.

8. This version (and the instructions) require a consumer reporting agency to release a report that is "frozen" when contacted by an individual, but do not require a particular type of contact. See proposed s. 138.25 (4) (a) 1. As a result, any sort of contact may be used (for example, telephone, regular mail, electronic mail, or Web site visit). Is that okay?

9. The instructions include an exception for releasing reports to subsidiaries, etc., for facilitating the extension of credit or for "other permissible use." Proposed s. 138.25 (8) (b) is intended to correspond to this exception. I don't think it's necessary to refer to extensions of credit because the bill only applies to releases of reports for extensions of credit and the bill does not apply to releases for any other use that is permitted under federal law. See proposed 138.25 (3). As for "other permissible use," I'm not sure what that means, so I did not include it. What constitutes an "other permissible use"?

10. I deleted the reference to permissible uses under 15 USC 1681b in the exception for state investigations of fraud, etc., because it is redundant to include under state law a limitation that applies under federal law.

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12. Regarding "Freezes; False Pretenses" in the instructions, I'm not sure what the reference to "permissible purpose" means and I did not include it. See proposed 138.25 (13).

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

*Delivered by
Jim Bender***Lee Misha**

From: Noreen Parrett [Nparrett@gklaw.com]
Sent: Tuesday, November 22, 2005 1:32 PM
To: Eric Englund
Cc: Louis C Schubert (E-mail); Lee Misha
Subject: RE: FW: Credit Freeze

Eric, I've set out several options below:

Page 9, line 11, after "insurance" add "involving the individual. For purposes of this section, "underwriting" means the insurer's determination of:

1. Whether to issue a policy of insurance.
2. The amount and terms of the coverage provided or to be provided under the policy.
3. The duration of the policy.
4. The rates and fees charged for the coverage.
5. Whether to renew or cancel a policy of insurance.
6. Any other activity determined to be underwriting under 15 U.S.C. sec. 1681b(a)(3)(C)."

OR

Page 9, line 11, after "insurance" add "involving the individual. For purposes of this section, "underwriting" has the meaning given under 15 U.S.C. sec. 1681b(a)(3)(C)."

OR

Page 9, line 11, after "insurance" add "involving the individual. For purposes of this section, "underwriting" shall be interpreted consistent with the interpretation given under 15 U.S.C. sec. 1681b(a)(3)(C)."

>>> "Eric Englund" <eenglund@tds.net> 11/22/05 11:42 AM >>>

We want it interpreted consistent with FCRA to the extent that it allows insurers the ability to use a person's credit information for underwriting purposes. How do we get that done?????? Can you draft the language???? use "in connection with the underwriting of insurance involving the individual"....I don't know how to answer # 2 below, lets start with just company....on # 3 can we say interpretation will be consistent with FCRA???

-----Original Message-----

From: Noreen Parrett [mailto:Nparrett@gklaw.com]
Sent: Tuesday, November 22, 2005 11:22 AM
To: Eric Englund
Cc: Louis C Schubert (E-mail); Don Cleasby (E-mail); Misha Lee (E-mail)
Subject: Re: FW: Credit Freeze

A couple of comments/suggestions:

1. Might want to parrot FCRA and say "in connection with the underwriting of insurance involving the individual (the FCRA says "involving the consumer" but "consumer" isn't used in this bill).

2. What does "insurer" mean? Is it only the insurance company? Could an MGA that has underwriting responsibilities pull the credit report? What about an independent agent? The FCRA uses the term "person" in its insurance exception rather than the term "insurer."

3. What does "in connection with the underwriting of insurance mean"? "Underwriting" isn't defined in the FCRA but the FTC interprets the phrase pretty broadly to mean the determination of :

- a. Whether to issue a policy.
- b. The amount and terms of coverage.
- c. The duration of the policy.
- d. The rates and fees charged.
- e. Whether to renew or cancel a policy.

Would this law be interpreted consistent with the FCRA? Should we add a definition? Should we say that it will be interpreted consistent with the FCRA?

>>> "Eric Englund" <eenglund@tds.net> 11/22/05 7:56 AM >>>

Noreen...please review the carve out for insurers at sec 138.25(8)(i).....does it work????????? -----
see 05-33642d attached

From: Bender, Jim [mailto:Jim.Bender@legis.state.wi.us]
Sent: Monday, November 21, 2005 9:54 AM
To: Lee Misha
Subject: Credit Freeze

Misha -

I am still going over it myself...

<<05-33642dn.pdf>> <<05-33642.pdf>>

James E. Bender
Communications Director
Office of Rep. Jeff Fitzgerald
Assistant Majority Leader
(608) 266-2540

BILL

1 (e) The state or its agents or assigns acting to investigate fraud or acting to
2 investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its
3 other statutory responsibilities.

4 (f) The use of credit information for the purposes of prescreening as provided
5 under 15 USC 1681b (c).

6 (g) A person administering a credit file monitoring subscription service or
7 similar service to which the individual has subscribed.

8 (h) A person for the purpose of providing an individual with a copy of his or her
9 consumer report upon the individual's request.

10 (i) An insurer authorized to do business in this state that uses the consumer
11 report in connection with the underwriting of insurance.

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13 charge an individual a fee of no more than \$10 each time that the individual requests
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*Ex. Law - to a person who intends
to use EW info
connection with
the underwriting
of insurance
involving
the consumer*

Kunkel, Mark

From: Bender, Jim
Sent: Friday, January 06, 2006 2:16 PM
To: Kunkel, Mark
Subject: FW: Changes to LRB 3364/2
Attachments: credit freeze changes.doc

All of these changes are acceptable to us. I will call you shortly.

From: Rose Oswald Poels [mailto:ropoels@wisbank.com]
Sent: Friday, January 06, 2006 11:22 AM
To: Bender, Jim
Cc: Mike Semmann
Subject: Changes to LRB 3364/2

Jim,

Per our discussion, attached are changes WBA would respectfully request be made to the above-referenced LRB draft related to credit security freezes. WBA may have additional comments if the /2 version of the draft is later substantively modified.

Please do not hesitate to contact me if you have any questions.

Thank you,

Rose

Rose Oswald Poels
Vice President - Legal
Wisconsin Bankers Association
4721 South Biltmore Lane
P.O. Box 8880
Madison, WI 53708-8880
608/441-1200
<<<http://www.wisbank.com/>>>

The information contained in this electronic communication and any attached documentation is intended to be general information only and does not constitute legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship.

REQUESTED CHANGES TO LRB 3364/2

Page 8

Line 9 should read as follows: “individual issued or is otherwise personally liable on a negotiable instrument; or”

Line 11 should read as follows: “instrument; or a person who otherwise has a legitimate business need for the information in connection with a business transaction initiated by the individual.”

Line 21 should read as follows: “(b) A person and a subsidiary...”

→ a person of a person?

Page 9

Insert after line 11 the following: “(j) A person who intends to use the information for employment purposes.”

Page 10

Line 15 should read as follows: “report in connection with a credit transaction without your express authorization. A security freeze must be requested in

Lines 16-17 should read as follows: “writing by certified mail. The security freeze is designed to prevent an extension of credit, like a loans, and services from being approved in your name without your consent. However, you

Lines 21-22 should read as follows: “make regarding a loan, credit, mortgage, or investment, cellular phone, utilities, Internet credit card transaction, or other services, including an extension of credit

Kunkel, Mark

From: Bender, Jim
Sent: Friday, January 06, 2006 2:16 PM
To: Kunkel, Mark
Subject: FW: credit freeze edits
Importance: High
Attachments: 05-33642 redline alt.pdf

→ on p 4, lines 16 & 17

Mark - we only want the changes on page 8 of this pdf. The language pertaining to ID Theft victims only is not to be used.

From: JULIUS, GERALD (AIT) [mailto:gj1583@att.com]
Sent: Thursday, January 05, 2006 4:24 PM
To: Bender, Jim
Subject: credit freeze edits
Importance: High

Jim,

Thank you for your patience regarding our proposed edits to the credit freeze draft. The attached offers our proposed changes under the sections titled Security Freezes and Exceptions. I will follow-up with you on Friday.

BILL

O-NOTE Placement
Preventing or investigating potential fraud or theft of identity

1 (b) This section does not prohibit a consumer reporting agency from advising
2 a 3rd party that an individual's consumer report includes a security freeze and that
3 the consumer reporting agency must obtain the individual's authorization before
4 releasing the individual's consumer report.

5 (8) EXCEPTIONS. This section does not apply to an individual's consumer report
6 that a consumer reporting agency releases to, or for, any of the following:

7 (a) 1. a. A person with whom the individual has, or had prior to assignment,
8 an account or contract, including a demand deposit account; or a person to whom the
9 individual issued a negotiable instrument; for the purpose of reviewing the account
10 or collecting the financial obligation owing for the account, contract, or negotiable
11 instrument.

12 b. A subsidiary, affiliate, or agent of a person specified in subd. 1. a.

13 c. An assignee of a financial obligation owing by the individual to a person
14 specified in subd. 1. a.

15 d. A prospective assignee of a financial obligation owing by the individual to
16 a person specified in subd. 1. a. in conjunction with the proposed purchase of the
17 financial obligation.

18 2. For purposes of subd. 1. a., "reviewing the account" includes activities related
19 to account maintenance, monitoring, credit line increases, and account upgrades and
20 enhancements.

21 (b) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person
22 to whom the individual has authorized release of the consumer report under sub. (4).

23 (c) Any state or local agency, law enforcement agency, court, or private
24 collection agency acting pursuant to a court order, warrant, or subpoena.

25 (d) A child support agency acting pursuant to 42 USC 651-669b.

*** CURRENT THROUGH P.L. 109-147, APPROVED 12/22/05 ***
*** WITH A GAP OF 109-135 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
CREDIT REPORTING AGENCIES

♦ **GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

15 USCS § 1681b (2005)

§ 1681b. Permissible purposes of consumer reports

(a) In general. Subject to subsection (c), any consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe--

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or

(F) otherwise has a legitimate business need for the information--

(i) in connection with a business transaction that is initiated by the consumer; or

(ii) to review an account to determine whether the consumer continues to meet the terms of the account.

(4) In response to a request by the head of a State or local child support enforcement agency (or a State or local government official authorized by the head of such an agency), if the person making the request certifies to the consumer reporting agency that--

(A) the consumer report is needed for the purpose of establishing an individual's capacity to make child support payments or determining the appropriate level of such payments;

(B) the paternity of the consumer for the child to which the obligation relates has been established or acknowledged by the consumer in accordance with State laws under which the obligation arises (if required by those laws);

(C) the person has provided at least 10 days' prior notice to the consumer whose report is requested, by certified or registered mail to the last known address of the consumer, that the report will be requested; and

(D) the consumer report will be kept confidential, will be used solely for a purpose described in subparagraph (A), and will not be used in connection with any other civil, administrative, or criminal proceeding, or for any other purpose.

(5) To an agency administering a State plan under section 454 of the Social Security Act (42 U.S.C. 654) for use to set an initial or modified child support award.

the information is to be furnished and involving the extension of credit to * * * the consumer."

7. Seller of Property Extending Credit

A seller of property has a permissible purpose under this subsection to obtain a consumer report on a prospective purchaser to whom he is planning to extend credit.

8. Uncoded Credit Guides

A consumer reporting agency may not furnish an uncoded credit guide, because the recipient does not have a permissible purpose to obtain a consumer report on each consumer listed. (As discussed under section 603(d), item 4 *supra*, credit guides are listings that credit bureaus furnish to credit grantors, rating how consumers pay their bills. Such guides are a series of "consumer reports" on the "consumers" listed therein, unless coded so that the consumer's identity is not disclosed.)

9. Liability for Bad Checks

A party attempting to recover the amount due on a bad check is attempting to collect a debt and, therefore, has a permissible purpose to obtain a consumer report on the consumer who wrote it, and on any other consumer who is liable for the amount of that check under applicable state law.

Section 604(3)(B)—A consumer reporting agency may issue a consumer report to "a person which it has reason to believe * * * intends to use the information for employment purposes;"

1. Current Employees

An employer may obtain a consumer report on a current employee in connection with an investigation of the disappearance of money from employment premises, because "retention as an employee" is included in the definition of "employment purposes" (section 603(h)).

2. Consumer Reports on Applicants and Non-applicants

An employer may obtain a consumer report for use in evaluating the subject's application for employment but may not obtain a consumer report to evaluate the application of a consumer who is not the subject of the report.

3. Grand Jurors

The fact that grand jurors are usually paid a stipend for their service does not provide a district attorney's office a permissible purpose for obtaining consumer reports on them, because such service is a duty, not "employment."

Section 604(3)(C)—A consumer reporting agency may issue a consumer report to "a

person which it has reason to believe * * * intends to use the information in connection with the underwriting of insurance involving the consumer;"

1. Underwriting

An insurer may obtain a consumer report to decide whether or not to issue a policy to the consumer, the amount and terms of coverage, the duration of the policy, the rates or fees charged, or whether or not to renew or cancel a policy, because these are all "underwriting" decisions.

2. Claims

An insurer may not obtain a consumer report for the purpose of evaluating a claim (to ascertain its validity or otherwise determine what action should be taken), because permissible purposes relating to insurance are limited by this section to "underwriting" purposes.

Section 604(3)(D)—A consumer reporting agency may issue a consumer report to "a person which it has reason to believe * * * intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status * * *"

1. Appropriate recipient

Any party charged by law (including a rule or regulation having the force of law) with responsibility for assessing the consumer's eligibility for the benefit (not only the agency directly responsible for administering the benefit) has a permissible purpose to receive a consumer report. For example, a district attorney's office or social services bureau, required by law to consider a consumer's financial status in determining whether that consumer qualifies for welfare benefits, has a permissible purpose to obtain a report on the consumer for that purpose. Similarly, consumer reporting agencies may furnish consumer reports to townships on consumers whose financial status the townships are required by law to consider in determining the consumers' eligibility for assistance, or to professional boards (e.g., bar examiners) required by law to consider such information on applicants for admission to practice.

2. Inappropriate Recipient

Parties not charged with the responsibility of determining a consumer's eligibility for a license or other benefit, for example, a party competing for an FCC radio station construction permit, would not have a permissible purpose to obtain a consumer report on that consumer.

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O-NOTE

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2005 BILL

Today
4:30 PM

Regen

1 AN ACT *to create* 138.25 of the statutes; **relating to:** allowing individuals to
2 restrict release of credit reports and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Subject to certain exceptions, this bill allows an individual to prohibit a consumer reporting agency from releasing the individual's consumer report for any purpose related to the extension of credit without the individual's prior authorization.

Under the bill, "consumer report" has the same meaning as "consumer report" under the federal Fair Credit Reporting Act (FCRA), which defines "consumer report" as any written, oral, or other communication by a consumer reporting agency bearing on an individual's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, which is used or expected to be used as a factor in establishing the individual's eligibility for credit or insurance, employment, or any other purpose allowed under federal law. Although a "consumer report" includes communications for purposes other than extensions of credit, the bill allows an individual to prohibit releases of his or her consumer report only for extensions of credit. The bill does not allow an individual to prohibit releases for any of the other purposes included in the definition of "consumer report."

Also under the bill, "consumer reporting agency" has the same meaning as under the FCRA, which defines "consumer reporting agency" as any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information

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or other information on individuals for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

The bill prohibits a consumer reporting agency from releasing an individual's report for an extension of credit if the report includes a "security freeze," which the bill defines as a notice indicating that release of the report is subject to the bill. If an individual makes a request by certified mail, provides proper identification, and, subject to certain exceptions, pays a fee, a consumer reporting agency must include a security freeze with the individual's consumer report no later than five business days after receiving the request. No later than ten business days after including the security freeze, the consumer reporting agency must send the individual a notice confirming the security freeze. The notice must include a personal identification number (PIN), password, or other device for the individual to use to authorize release of the consumer report. Also, the notice must describe the procedures for an individual to authorize the release.

To authorize release of a consumer report that includes a security freeze, an individual must contact the consumer reporting agency, provide proper identification and the PIN, password, or other device described above, and specify the time period for which the consumer reporting agency is allowed to release the report. Subject to certain exceptions, the individual must also pay a fee to the consumer reporting agency. The bill requires a consumer reporting agency to release the consumer report for purposes of extensions of credit during the time period specified by the individual, except that a consumer reporting agency is not required to release the report sooner than three business days after the individual contacts the consumer reporting agency. However, a consumer reporting agency may, but is not required, to release a report sooner than three business days if the consumer reporting agency establishes procedures for individuals to contact the consumer reporting agency by telephone, facsimile, the Internet, or other electronic media.

The bill contains exceptions to the above requirements. The following consumer reporting agencies are not required to include a security freeze with a consumer report: 1) check services or fraud prevention services companies; 2) deposit account information service companies; and 3) certain resellers of consumer credit information. However, if a reseller obtains a consumer report about an individual that includes a security freeze included by another consumer reporting agency, the reseller must include the security freeze in any consumer report regarding the individual that the reseller maintains.

The bill also allows a consumer reporting agency to release an individual's consumer report that includes a security freeze to any of the following for the following purposes, even if the individual has not authorized release of the report: 1) certain persons with whom the individual has an account or contract or to whom the individual has issued a negotiable instrument, for the purpose of reviewing the account or collecting a financial obligation owing for the account, contract, or negotiable instrument; 2) subsidiaries, affiliates, agents, assignees, and prospective assignees of the foregoing persons; 3) state or local agencies, law enforcement agencies, courts, or private collection agencies acting pursuant to court orders,

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3 or is otherwise personally liable on 3 ✓

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warrants, or subpoenas; 4) child support agencies acting to enforce child support obligations; 5) the state or its agents or assigns acting to investigate fraud or collect delinquent taxes or unpaid court orders, or to fulfill any other statutory responsibilities; 6) persons administering a credit file monitoring service to which the individual has subscribed; 7) persons who provide the individual with a copy of a consumer report at the individual's request; 8) insurers authorized to do business in this state who use consumer reports for underwriting insurance. ✓

In addition, if an individual has authorized release of a consumer report to a person during a time period specified by the individual, the consumer reporting agency may release the report to any subsidiary, affiliate, agent, assignee, and prospective assignee of that person. Also, a consumer reporting agency may release reports for the purpose of prescreening that is allowed under the FCRA. (Prescreening is a process in which consumer reporting agencies compile lists of consumers who meet specific criteria and provide the lists to third parties for credit or insurance solicitation purposes.)

The bill also does all of the following:

1. Requires a consumer reporting agency to remove security freezes upon an individual's request.
2. Allows a consumer reporting agency to release a consumer report if an individual made a material misrepresentation of fact regarding a security freeze. Before releasing a report, the consumer reporting agency must notify the individual about the misrepresentation.
3. Allows a consumer reporting agency to advise a third party that the consumer reporting agency must obtain an individual's authorization before releasing a consumer report to the third party.
4. Allows a third party to treat an individual's application for an extension of credit as incomplete if the bill prohibits a consumer reporting agency from releasing the individual's consumer report to the third party.
5. Allows a consumer reporting agency to charge specified fees to individuals who request security freezes, authorize the release of consumer reports that include security freezes, or request removal of security freezes. However, the bill prohibits a consumer reporting agency from charging fees to victims of identity theft.
6. If a consumer report includes a freeze, prohibits a consumer reporting agency from making changes to certain information in the report without providing written notice.
7. Allows a consumer reporting agency to collect damages from persons who knowingly violate the bill or federal credit reporting law or who take certain actions regarding consumer reports or security freezes under false pretenses.
8. Requires a consumer reporting agency to provide individuals with a notice describing their rights under the bill whenever the consumer reporting agency is required to provide a notice under the FCRA regarding consumer rights with respect to consumer reports.

Finally, the bill requires the Division of Banking in the Department of Financial Institutions (division) to enforce the bill's requirements. The bill also requires the division to promulgate rules regarding the "proper identification" that individuals

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must provide to consumer reporting agencies when requesting a security freeze or removal of a security freeze or authorizing release of consumer reports.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 138.25 of the statutes is created to read: -

2 **138.25 Access to credit reports. (1) DEFINITIONS.** In this section:

3 (a) “Business day” means a business day, as defined in s. 421.301 (6), that is not
4 a legal holiday under s. 895.20 or a federal legal holiday.

5 (b) “Consumer report” has the meaning given in 15 USC 1681a (d).

6 (c) “Consumer reporting agency” has the meaning given in s. 15 USC 1681a (f).

7 (d) “Reseller” means a consumer reporting agency that acts only as a reseller
8 of credit information by assembling and merging information contained in a
9 database of another consumer reporting agency or multiple consumer credit
10 reporting agencies, and does not maintain a permanent database of credit
11 information from which new consumer reports are produced.

12 (e) “Security freeze” means a notice included with an individual’s consumer
13 report that indicates that releases of the consumer report are subject to this section.

14 **(2) SECURITY FREEZES.** (a) Except as provided in par. (c), a consumer reporting
15 agency shall include a security freeze with an individual’s consumer report if the
16 individual does all of the following:

17 1. Sends a request by certified mail to an address designated by the consumer
18 reporting agency.

19 2. Provides the consumer reporting agency with proper identification.

20 3. If applicable, pays the fee specified in sub. (9).

BILL

1 (b) No later than 5 business days after an individual satisfies the requirements
2 under par. (a) 1. to 3., a consumer reporting agency shall include a security freeze
3 with the individual's consumer report. No later than 10 business days after
4 including the security freeze with the consumer report, the consumer reporting
5 agency shall send the individual a notice that does all of the following:

6 1. Confirms that a security freeze is included with the individual's consumer
7 report.

8 2. Includes a unique personal identification number, password, or other device
9 for the individual to authorize release of the consumer report.

10 3. Describes the procedure for authorizing release of the consumer report.

11 (c) Paragraph (a) does not apply to any of the following:

12 1. A reseller, except that if a reseller obtains from another consumer reporting
13 agency an individual's consumer report that includes a security freeze, the reseller
14 shall include the security freeze with any consumer report regarding the individual
15 that the reseller maintains.

16 2. A consumer reporting agency that is a check services or fraud prevention
17 services company which issues reports on incidents of fraud or authorizations for the
18 purpose of approving or processing negotiable instruments, electronic funds
19 transfers, or similar methods of payments.

20 3. A consumer reporting agency that is a deposit account information service
21 company which issues reports regarding account closures due to fraud, substantial
22 overdrafts, automated teller machine abuse, or similar negative information
23 regarding an individual to inquiring financial institutions for use only in reviewing
24 an individual's request for a deposit account at the inquiring financial institution.

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1 **(3) PROHIBITION.** Except as provided in sub. (8), if an individual's consumer
2 report includes a security freeze, a consumer reporting agency may not release the
3 consumer report to any person for any purpose related to the extension of credit
4 unless the individual gives prior authorization for the release under sub. (4).

5 **(4) RELEASE AUTHORIZATION.** (a) An individual whose consumer report includes
6 a security freeze may authorize a consumer reporting agency to release the report
7 by doing all of the following:

8 1. Contacting the consumer reporting agency using a point of contact
9 designated by the consumer reporting agency.

10 2. Providing proper identification and the personal identification number,
11 password, or other device specified in sub. (2) (b) 2.

12 3. Specifying the time period for which the release is authorized.

13 4. If applicable, paying the fee specified in sub. (9).

14 (b) If an individual satisfies the requirements under par. (a) 1. to 4., the
15 consumer reporting agency shall release the individual consumer report during the
16 time period specified by the individual, except that a consumer reporting agency is
17 not required to release a consumer report sooner than 3 business days after the
18 individual contacts the consumer reporting agency under par. (a) 1. A consumer
19 reporting agency may establish procedures for releasing consumer reports sooner
20 than 3 business days for individuals who satisfy the requirements under par. (a) 1.
21 to 4. by telephone, facsimile, or the Internet, or by use of other electronic media.

22 **(5) RELEASE OF REPORTS.** A consumer reporting agency may release an
23 individual's consumer report that includes a security freeze if any of the following
24 apply:

25 (a) The individual authorizes the release under sub. (4).

BILL

1 (b) The individual requests removal of the security freeze under sub. (6).

2 (c) The consumer reporting agency included a security freeze with the
3 consumer report due to a material misrepresentation of fact by the individual, if the
4 consumer reporting agency notifies the individual in writing about the
5 misrepresentation before the consumer reporting agency releases the consumer
6 report.

7 **(6) REMOVING SECURITY FREEZES.** (a) An individual may request removal of a
8 security freeze included with the individual's consumer report by doing all of the
9 following:

10 1. Contacting the consumer reporting agency using a point of contact
11 designated by the consumer reporting agency.

12 2. Providing proper identification and the personal identification number,
13 password, or other device specified in sub. (2) (b) 2.

14 3. If applicable, paying the fee specified in sub. (9).

15 (b) If an individual requests removal of a security freeze under par. (a), the
16 consumer reporting agency shall remove the security freeze from the individual's
17 consumer report no later than 3 business days after the individual satisfies the
18 requirements under par. (a) 1. to 3. and the consumer reporting agency's release of
19 the report is no longer subject to this section.

20 **(7) THIRD PARTIES.** (a) If a 3rd party requests access to an individual's consumer
21 report that includes a security freeze, the request is made in connection with the
22 individual's application for an extension of credit, and the consumer reporting
23 agency is prohibited under this section from releasing the report to the 3rd party, the
24 3rd party may treat the individual's application as incomplete.

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SECTION 1

or is otherwise personally liable on ✓

1 (b) This section does not prohibit a consumer reporting agency from advising
2 a 3rd party that an individual's consumer report includes a security freeze and that
3 the consumer reporting agency must obtain the individual's authorization before
4 releasing the individual's consumer report.

5 (8) EXCEPTIONS. This section does not apply to an individual's consumer report
6 that a consumer reporting agency releases to, or for, any of the following:

7 (a) 1. a. A person with whom the individual has, or had prior to assignment,
8 an account or contract, including a demand deposit account; ~~or~~ a person to whom the
9 individual issued a negotiable instrument; for the purpose of reviewing the account
10 ~~or~~ collecting the financial obligation owing for the account, contract, or negotiable
11 instrument. INSERT 8-11 ✓

12 b. A subsidiary, affiliate, or agent of a person specified in subd. 1. a.

13 c. An assignee of a financial obligation owing by the individual to a person
14 specified in subd. 1. a.

15 d. A prospective assignee of a financial obligation owing by the individual to
16 a person specified in subd. 1. a. in conjunction with the proposed purchase of the
17 financial obligation.

18 2. For purposes of subd. 1. a., "reviewing the account" includes activities related
19 to account maintenance, monitoring, credit line increases, and account upgrades and
20 enhancements.

21 (b) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person
22 to whom the individual has authorized release of the consumer report under sub. (4).

23 (c) Any state or local agency, law enforcement agency, court, or private
24 collection agency acting pursuant to a court order, warrant, or subpoena.

25 (d) A child support agency acting pursuant to 42 USC 651-669b.

INSERT 8-9

no preventing or investigating potential fraud or theft of identity

BILL

INSERT 9-12 ✓

1 (e) The state or its agents or assigns acting to investigate fraud or acting to
2 investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its
3 other statutory responsibilities.

4 (f) The use of credit information for the purposes of prescreening as provided
5 under 15 USC 1681b (c).

6 (g) A person administering a credit file monitoring subscription service or
7 similar service to which the individual has subscribed.

8 (h) A person for the purpose of providing an individual with a copy of his or her
9 consumer report upon the individual's request.

✓ INSERT 9-11

10 (i) An insurer authorized to do business in this state that uses the consumer
11 report in connection with the underwriting of insurance.

12 **(9) FEES.** (a) Except as provided in par. (b), a consumer reporting agency may
13 charge an individual a fee of no more than \$10 each time that the individual requests
14 a security freeze under sub. (2), authorizes release of a consumer report under sub.
15 (4), or requests removal of a security freeze under sub. (6).

16 (b) A consumer reporting agency may not charge a fee to an individual who
17 submits evidence satisfactory to the consumer reporting agency that the individual
18 made a report to a law enforcement agency under s. 943.201 (4) regarding the
19 individual's personal identifying information or a personal identifying document. A
20 copy of a law enforcement agency's report under s. 943.201 (4) is considered
21 satisfactory evidence for purposes of this paragraph.

22 **(10) INFORMATION CHANGES.** (a) Except as provided in par. (b), if a consumer
23 reporting agency includes a security freeze in an individual's consumer report, the
24 consumer reporting agency may not change the individual's name, date of birth,
25 social security number, or address in the report unless, no later than 30 business

BILL

1 days before or after changing the information, the consumer reporting agency sends
 2 written notice of the change to the individual. If the notice concerns a change of
 3 address, the consumer reporting agency shall send the notice to both the new and
 4 former address.

5 (b) Notice is not required under par. (a) for changing abbreviations for names
 6 or streets, correcting spelling, transposing numbers, or making other technical
 7 changes.

8 (11) NOTICES. Whenever a consumer reporting agency is required to provide
 9 an individual with a notice under 15 USC 1681g regarding consumer rights under
 10 the federal credit reporting law, the consumer reporting agency shall also provide the
 11 individual with the following notice:

12 "Wisconsin Consumers Have the Right to Obtain a Security Freeze.

13 You have a right to include a "security freeze" with your credit report, which will
 14 prohibit a consumer reporting agency from releasing information in your credit
 15 report without your express authorization. A security freeze must be requested in
 16 writing by certified mail. The security freeze is designed to prevent credit, loans, and
 17 ~~services~~ from being approved in your name without your consent. However, you
 18 should be aware that using a security freeze to take control over who gets access to
 19 the personal and financial information in your credit report may delay, interfere
 20 with, or prohibit the timely approval of any subsequent request or application you
 21 make regarding a loan, credit, mortgage, investment, cellular phone, utilities,
 22 ^{or} Internet credit card transaction, or other services, including an extension of credit
 23 at point of sale.

24 When you request a security freeze for your credit report, you will be provided
 25 a personal identification number or password to use if you choose to remove the

in connection with a credit transaction

an extension of

such as a

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1 security freeze from your credit report or authorize the release of your credit report
2 for a period of time after the security freeze is in place. To provide that authorization
3 you must contact the consumer reporting agency and provide all of the following:

- 4 (1) The personal identification number or password.
- 5 (2) Proper identification to verify your identity.
- 6 (3) The period of time for which the report shall be made available.
- 7 (4) Payment of the appropriate fee.

8 A security freeze does not apply to a person or its affiliates, or collection
9 agencies acting on behalf of a person, with which you have an existing account, that
10 requests information in your credit report for the purposes of reviewing or collecting
11 the account. Reviewing the account includes activities related to account
12 maintenance, monitoring, credit line increases, and account upgrades and
13 enhancements.

14 Unless you are a victim of identity theft with a police report to verify the crime,
15 a consumer reporting agency has the right to charge you no more than \$10 to include
16 a security freeze with your credit report, no more than \$10 to authorize release of a
17 report that includes a security freeze, and no more than \$10 to remove a security
18 freeze from your credit report.”

19 **(12) ENFORCEMENT; RULES.** (a) The division of banking shall enforce this section.

20 (b) The division of banking shall promulgate rules specifying what constitutes
21 proper identification for purposes of subs. (2) (a) 2., (4) (a) 2., and (6) (a) 2. The rules
22 shall be consistent with any requirements under federal credit reporting law
23 pertaining to proper identification.

24 **(13) DAMAGES.** Any person who obtains a consumer report from a consumer
25 reporting agency, requests a consumer reporting agency to include or remove a

BILL

1 security freeze in a consumer report, or authorizes a consumer reporting agency to
2 release a consumer report that includes a security freeze, under false pretenses or
3 in knowing violation of this section or federal law, shall be liable to the consumer
4 reporting agency for actual damages sustained by the consumer reporting agency or
5 \$1,000, whichever is greater.

6 **SECTION 2. Effective date.**

7 (1) This act takes effect on January 1, 2007.

8 (END)

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3364/3ins
MDK:.....

INSERT 2A:

1
2 or for the purpose of preventing or investigating potential fraud or identity theft; 2) a ✓
3 person who has a legitimate business need for the information in connection with a
4 business transaction initiated by the individual; NO
A

INSERT 3A:

5
6 or 10) persons who intend to use the information for employment purposes NO
A

INSERT 8-9:

7
8 or a person who otherwise has a legitimate business need for the information in connection
9 with a business transaction initiated by the individual;

INSERT 8-11:

10
11 or conducting the business transaction NO
A

INSERT 9-11:

12
13 involving the individual. For purposes of this paragraph, "underwriting" consists of the ✓
14 activities described in the Federal Trade Commission's interpretation of 15 USC 1681b (a)
15 (3) (C) in 16 CFR Part 600, App. A NO
A

INSERT 9-12:

16
17 (j) A person who intends to use the information for employment purposes. ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3364/3dn

MDK:.....

↑
JKL

Rep. Fitzgerald:

Please note the following about this version:

1. In order to make the change to proposed s. 138.25 (8) (a) 1. a. to create an exception for a person with a legitimate business need for a business transaction, I had to add language restricting the person's use of the consumer report to conducting the business transaction.
2. Also regarding proposed s. 138.25 (8) (a) 1. a., note that the exclusion for preventing or investigating fraud or identity theft is applicable only to a person described in s. 138.25 (8) (a) 1. a. Therefore, the exclusion applies only to a person who has a preexisting relationship with the consumer or to a person with a legitimate business need in connection with a business transaction initiated by the consumer. Is that okay?
3. I did not add "person" to the beginning of proposed s. 138.25 (8) (b) because I don't think it is necessary. If a consumer authorizes a person to receive a report under the bill, then that person is not excluded from the bill's coverage. Instead, that person has obtained a report in accordance with the bill.
4. Regarding the "underwriting" issue, I referred to the FTC's interpretation of that term.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3364/3dn
MDK:jld:pg

January 9, 2006

Rep. Fitzgerald:

Please note the following about this version:

1. In order to make the change to proposed s. 138.25 (8) (a) 1. a. to create an exception for a person with a legitimate business need for a business transaction, I had to add language restricting the person's use of the consumer report to conducting the business transaction.
2. Also regarding proposed s. 138.25 (8) (a) 1. a., note that the exclusion for preventing or investigating fraud or identity theft is applicable only to a person described in s. 138.25 (8) (a) 1. a. Therefore, the exclusion applies only to a person who has a preexisting relationship with the consumer or to a person with a legitimate business need in connection with a business transaction initiated by the consumer. Is that okay?
3. I did not add "person" to the beginning of proposed s. 138.25 (8) (b) because I don't think it is necessary. If a consumer authorizes a person to receive a report under the bill, then that person is not excluded from the bill's coverage. Instead, that person has obtained a report in accordance with the bill.
4. Regarding the "underwriting" issue, I referred to the FTC's interpretation of that term.

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Basford, Sarah

From: Bender, Jim
Sent: Tuesday, January 10, 2006 4:45 PM
To: LRB.Legal
Subject: Draft review: LRB 05-3364/3 Topic: Access to consumer credit reports

It has been requested by <Bender, Jim> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-3364/3 Topic: Access to consumer credit reports