

Clearinghouse Rule 06-130

DATCP Docket No. 06-R-08
Rules Clearinghouse No. _____

Proposed Hearing Draft
October 24, 2006

PROPOSED ORDER OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION ADOPTING RULES

The Wisconsin department of agriculture, trade and consumer protection proposes the following rule to create ch. ATCP 112, relating to credit report security freezes.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

This rule implements s. 100.54, Stats. (created by 2005 Wis. Act 140), related to credit report security freezes. This rule clarifies the information that credit reporting agencies may request in order to verify the identity of persons requesting credit report security freezes. Credit reporting agencies must adopt written procedures to comply with s. 100.54, Stats., and this rule.

Statutory Authority

Statutory Authority: ss. 93.07(1), 100.54(12) and 100.20(2), Stats.
Statutes Interpreted: ss. 100.54 and 100.20(1), Wis. Stats.

The Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”) has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. Section 100.54(12), Stats., specifically requires DATCP to adopt rules related to identification required of consumers requesting credit report security freezes. Under s. 100.20(2), Stats., DATCP may adopt rules (general orders) to prohibit unfair business practices and require fair practices.

Background

Section 100.54, Stats., created by 2005 Wisconsin Act 140, regulates access to consumer credit reports. The law permits a consumer to create a “security freeze” on his or her consumer credit report. A security freeze limits the release and distribution of the consumer credit report. At any time after creating a security freeze, the consumer may

ask the credit reporting agency to release the consumer's credit report for a specified period of time, or to terminate the security freeze altogether.

A consumer who asks a credit reporting agency to create or release a security freeze must provide information to verify the consumer's identity. Under s. 100.54(12), Stats., DATCP must adopt rules to define what constitutes proper identification. Under s. 100.20(2), Stats., DATCP may prohibit unfair business practices (including unfair credit reporting practices) and require fair practices.

This rule does all of the following:

- Spells out the information that a credit reporting agency may require of a consumer who asks the agency to create a security freeze, in order to verify the consumer's identity.
- Spells out the information that a credit reporting agency may require of a consumer who asks the agency to release or terminate a security freeze, in order to verify the consumer's identity. The agency may require the same information that it required to create the security freeze and may, in addition, require a password assigned to the consumer when the security freeze was created.
- Requires credit reporting agencies to spell out written procedures for complying with this rule and s. 100.54, Stats.

Federal and Surrounding State Regulations

Federal Regulation

The federal Fair Credit Reporting Act of 2003 allows consumers who are victims of identity theft to freeze their credit reports. If a consumer is not a victim of identity theft, they have no option under federal law to place a freeze on their credit report. For victims of identity theft, federal rules under 16 CFR § 614.1 spell out the information that a credit reporting agency may use to verify the identity of consumers who ask the agency to create or release a security freeze. Federal standards are consistent with the standards in s. 100.54, Stats., and this rule.

Surrounding State Regulations

Approximately 17 states have enacted laws that require consumer credit reporting agencies to freeze consumer credit reports upon request. Under all of those laws, credit reporting agencies may require requesting consumers to submit information to verify their identity. Most states allow credit reporting agencies to demand "information generally deemed sufficient to identify a person." If that information is insufficient,

some states allow the consumer reporting agency to request “additional information concerning the consumer's employment and personal or family history in order to verify his or her identity.”

Of the states surrounding Wisconsin, Illinois and Minnesota have enacted security freeze legislation. Security freeze legislation has been introduced, but not yet enacted, in Iowa and Michigan.

The Minnesota law took effect on August 1, 2006 and the Illinois law will take effect on January 1, 2006. The Minnesota and Illinois laws, like most other state laws on the subject, allow credit reporting agencies to demand “information generally deemed sufficient to identify a person.” If that information is insufficient, Illinois law allows the consumer reporting agency to request “additional information concerning the consumer’s employment and personal or family history in order to verify his or her identity.”

Business Impact Analysis

This rule only affects credit reporting agencies by regulating how the agency may identify consumers who request security freezes or changes to their security freeze status. The rule has no effect on a business that is not a credit reporting agency. Currently, there are only 3 credit reporting agencies operating in the United States. None of these are small businesses. A complete Business Impact Analysis is attached.

Fiscal Estimate

This rule will have no significant fiscal impact on DATCP or local units of government. A complete Fiscal Estimate is attached.

DATCP Contact

Questions and comments related to this rule may be directed to:

Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5160
E-Mail: michelle.reinen@datcp.state.wi.us

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1 **SECTION 1.** Chapter ATCP 112 is created to read:

1 **Chapter ATCP 112**

2 **CREDIT REPORT SECURITY FREEZES**

3
4 **ATCP 112.01 Definitions.** In this chapter:

- 5 (1) “Consumer report” has the meaning given in 15 USC 1681a(d).
6 (2) “Consumer reporting agency” has the meaning given in s. 15 USC 1681a(f).
7
8 (3) “Security freeze” has the meaning given in s. 100.54(1)(e), Stats.

9 **ATCP 112.02 Proof of identity to create a security freeze.** A consumer
10 reporting agency may request the following information from an individual in order to
11 confirm the individual’s identity for purposes of s. 100.54(2)(a)2., Stats.:

- 12 (1) The individual’s full name, including first, last, and middle names and any
13 suffix.
14 (2) Any name the individual previously used.
15 (3) The individual’s current and recent full addresses, including street address,
16 apartment number if any, city, state, and ZIP code.
17 (4) The individual’s social security number.
18 (5) The individual’s date of birth.
19 (6) Copies of government-issued documents that identify the individual.
20 (7) Copies of the individual’s utility bills.
21 (8) Identifying information, readily known by the individual in whose name the
22 security freeze is requested but not generally known by others, which the consumer
23 reporting agency lawfully obtained before receiving the security freeze request.

1 **ATCP 112.03 Proof of identity to release a credit report or remove a security**
2 **freeze.** A consumer credit reporting agency may require any of the following
3 information from an individual as proof of identity for purposes of ss. 100.54(4)(a)2. and
4 100.54(6)(a)2., Stats.:

5 **(1)** Any of the information listed in ss. ATCP 112.02(1) to (8).

6 **(2)** A unique personal identification number, password or other device that the
7 consumer credit reporting agency has assigned to the individual for that purpose, as
8 provided in s. 100.54(2)(b)2, Stats.

9 **ATCP 112.04 Written procedures.** A consumer credit reporting agency shall
10 adopt and implement written procedures for confirming an individual's identity for
11 purposes of ss.100.54(2)(a)2., 100.54(4)(a)2. and 100.54(6)(a)2., Stats. The procedures
12 shall be consistent with this chapter and s. 100.54, Stats. The procedures shall do all of
13 the following:

14 **(1)** Enable the consumer reporting agency to confirm the identity of a requesting
15 individual, so that the consumer reporting agency can correctly match the individual with
16 his or her file.

17 **(2)** Establish identification requirements that are commensurate with identifiable
18 risks of harm related to possible misidentification of individuals.

19 **(3)** Avoid requesting more information than necessary to confirm an individual's
20 identity unless the information is necessary for payment purposes.

21 **EFFECTIVE DATE:** This rule takes effect on the first day of the month following
22 publication in the Wisconsin administrative register, as provided in Wis. Stats. s.
23 227.22(2)(intro.).

Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen, Secretary