

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3364/1dn
MDK:lmk:pg

July 18, 2005

Rep. Fitzgerald:

Please review this bill to make sure it achieves your intent. In particular, please note the following about this bill:

1. The bill is based on a California law regarding "security freezes." See Cal. Civ. Code s. 1785.11.2. However, I don't think it's necessary to use the term "security freeze" to accomplish your intent.
2. Are the provisions allowing credit reporting agencies to charge fees okay? The fee amounts are identical to the fees allowed under the California law. However, I do not know the rationale behind the amounts. Different amounts might be appropriate for Wisconsin, but I'm not sure. Perhaps DFI can provide some input on this issue.
3. The bill requires DFI's Division of Banking to enforce the bill. Is that okay? Also, you might want to get DFI's input on whether any additional language is necessary for enforcement.
4. The bill has a delayed effective date of approximately 3 months to give credit reporting agencies time to change their procedures to comply with the bill. Is that okay?
5. This bill might be preempted by federal law. Arguments can be made for and against preemption, and I'm not sure how a court would decide the issue. The federal Fair Credit Reporting Act provides that state laws that are inconsistent with the federal act are preempted, but only to the extent of the inconsistency. See 15 USC 1681t(a). On one hand, the bill is inconsistent with the federal act because it allows individuals to prohibit the release of credit reports to persons who are otherwise allowed access to the reports under federal law. On the other hand, the bill is more protective of consumers than the federal law, and some courts have held that state laws that are more protective are not inconsistent with the federal act. *See generally*, A. Rodriguez, Fair Credit Reporting (Boston, MA: National Consumer Law Center, 2002) at s. 10.4.3. Please let me know whether you want me to look further into this issue.

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