

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.

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).

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