

2005 ASSEMBLY BILL 912

January 13, 2006 – Introduced by Representatives J. FITZGERALD, DAVIS, M. WILLIAMS, NERISON, MOULTON, LOTHIAN, KERKMAN, HAHN, VAN ROY, MUSSER, AINSWORTH, FREESE, LEMAHIEU, HINES, VOS, WOOD, OTT, MCCORMICK, KRAWCZYK, GOTTLIEB and ALBERS, cosponsored by Senators OLSEN, S. FITZGERALD, HARS DORF, LAZICH and ERPENBACH. Referred to Committee on State Affairs.

- 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, or is otherwise personally liable on, a negotiable instrument, for the purpose of reviewing the account or collecting a financial obligation owing for the account, contract, or negotiable instrument or for the purpose of preventing or investigating potential fraud or identity theft; 2) a person who has a legitimate business need for the information in connection with a business

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transaction initiated by the individual; 3) subsidiaries, affiliates, agents, assignees, and prospective assignees of the foregoing persons; 4) state or local agencies, law enforcement agencies, courts, or private collection agencies acting pursuant to court orders, warrants, or subpoenas; 5) child support agencies acting to enforce child support obligations; 6) 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; 7) persons administering a credit file monitoring service to which the individual has subscribed; 8) persons who provide the individual with a copy of a consumer report at the individual's request; or 9) insurers authorized to do business in this state who use consumer reports for underwriting insurance; or 10) persons who intend to use the information for employment purposes.

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

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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 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:

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

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

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

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

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

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

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

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

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

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

24 3. A consumer reporting agency that is a deposit account information service
25 company which issues reports regarding account closures due to fraud, substantial

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1 overdrafts, automated teller machine abuse, or similar negative information
2 regarding an individual to inquiring financial institutions for use only in reviewing
3 an individual's request for a deposit account at the inquiring financial institution.

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

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

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

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

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

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

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

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

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

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

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

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

14 1. Contacting the consumer reporting agency using a point of contact
15 designated by the consumer reporting agency.

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

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

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

24 **(7) THIRD PARTIES.** (a) If a 3rd party requests access to an individual's consumer
25 report that includes a security freeze, the request is made in connection with the

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1 individual's application for an extension of credit, and the consumer reporting
2 agency is prohibited under this section from releasing the report to the 3rd party, the
3 3rd party may treat the individual's application as incomplete.

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

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

10 (a) 1. a. A person with whom the individual has, or had prior to assignment,
11 an account or contract, including a demand deposit account; a person to whom the
12 individual issued or is otherwise personally liable on a negotiable instrument; or a
13 person who otherwise has a legitimate business need for the information in
14 connection with a business transaction initiated by the individual; for the purpose
15 of preventing or investigating potential fraud or theft of identity, reviewing the
16 account, collecting the financial obligation owing for the account, contract, or
17 negotiable instrument, or conducting the business transaction.

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

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

21 d. A prospective assignee of a financial obligation owing by the individual to
22 a person specified in subd. 1. a. in conjunction with the proposed purchase of the
23 financial obligation.

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1 2. For purposes of subd. 1. a., “reviewing the account” includes activities related
2 to account maintenance, monitoring, credit line increases, and account upgrades and
3 enhancements.

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

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

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

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

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

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

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

18 (i) An insurer authorized to do business in this state that uses the consumer
19 report in connection with the underwriting of insurance involving the individual.
20 For purposes of this paragraph, “underwriting” consists of the activities described in
21 the Federal Trade Commission’s interpretation of 15 USC 1681b (a) (3) (C) in 16 CFR
22 Part 600, App. A.

23 (j) A person who intends to use the information for employment purposes.

24 **(9) FEES.** (a) Except as provided in par. (b), a consumer reporting agency may
25 charge an individual a fee of no more than \$10 each time that the individual requests

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1 a security freeze under sub. (2), authorizes release of a consumer report under sub.
2 (4), or requests removal of a security freeze under sub. (6).

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

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

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

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

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

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

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

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

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

