

2007 SENATE BILL 275

September 27, 2007 – Introduced by Senators SULLIVAN, KREITLOW, COGGS, DARLING, ERPENBACH, LEHMAN, VINEHOUT, OLSEN, PLALE, HANSEN, KAPANKE, GROTHMAN, LEIBHAM and LASSA, cosponsored by Representatives NEWCOMER, KLEEFISCH, ALBERS, BALLWEG, BERCEAU, BIES, DAVIS, FRISKE, HAHN, HINTZ, HIXSON, HONADEL, JESKEWITZ, KRAMER, LEMAHIEU, LOTHIAN, MASON, MONTGOMERY, MUSSER, PARISI, PETERSEN, PETROWSKI, RICHARDS, ROTH, SINICKI, STASKUNAS, TOWNSEND, A. WILLIAMS, WOOD, ZEPNICK and POCAN. Referred to Committee on Veterans and Military Affairs, Biotechnology and Financial Institutions.

- 1 **AN ACT to create** 100.55 of the statutes; **relating to:** furnishing or using certain
2 consumer loan information to make solicitations and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current federal law, the Fair Credit Reporting Act (FCRA) imposes requirements and restrictions on certain uses of consumer information. Under the FCRA, the definition of a “consumer report” includes any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for credit to be used primarily for personal, family, or household purposes. A “consumer reporting agency” is any person, including a business entity, that, 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 or other information on consumers for the purpose of furnishing consumer reports to third-parties.

Under the FCRA, a consumer reporting agency may furnish a consumer report only under specified circumstances. Among these circumstances, a consumer reporting agency may furnish information to a person that it has reason to believe 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. Absent authorization by the consumer, a consumer reporting agency may furnish a

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consumer report relating to a consumer in connection with a credit transaction that is not initiated by the consumer (a “prescreened consumer report”) only if all of the following apply: (1) the transaction consists of a firm offer of credit; (2) the consumer reporting agency has complied with its obligations relating to maintaining a system allowing consumers to elect not to be the subject of prescreened consumer reports; and (3) the consumer has not elected to be excluded from the consumer reporting agency’s prescreened consumer reports. A prescreened consumer report is limited to the name and address of the consumer, an identifier that is not unique to the consumer, and other information pertaining to the consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity. The consumer reporting agency may also furnish a record of inquiries in connection with credit transactions not initiated by the consumer for the previous one-year period.

Under the FCRA, if a person uses a prescreened consumer report in connection with a credit transaction not initiated by the consumer, the person must provide, with each written solicitation made to the consumer, a clear and conspicuous statement containing certain information, including that the person’s prescreened consumer report was used in connection with the transaction, that the person received the offer of credit because the consumer satisfied certain criteria under which the consumer was selected for the offer, and that the consumer has a right not to be the subject of prescreened consumer reports and how to make this election. The user of the prescreened consumer report must also maintain on file certain information relating to the offer of credit made. In addition, each consumer reporting agency must maintain reasonable procedures designed to limit the furnishing of consumer reports to authorized purposes under the FCRA. These procedures must require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Each consumer reporting agency must make a reasonable effort to verify the identity of a new prospective user and the uses certified by this prospective user prior to furnishing the user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for an authorized purpose. A person may not use or obtain a consumer report for any purpose other than an authorized purpose, as certified to the consumer reporting agency by the prospective user.

This bill imposes certain state law restrictions on the dissemination and use of trigger lead information, which restrictions vary depending on whether or not the trigger lead is a consumer report under the FCRA. The bill defines “trigger lead” as information relating to a consumer that is furnished by a consumer reporting agency or personal financial data provider to a nonaffiliated third-party if all of the following apply: (1) the consumer has applied to a lender, other than the third-party to whom the information is furnished, for an extension of credit and the lender has provided the consumer’s credit application, or information derived from or related to the consumer’s credit application, to a consumer reporting agency or personal financial data provider for purposes of obtaining a consumer report or otherwise

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evaluating or rating the consumer's creditworthiness; (2) the information furnished to the third-party includes the consumer's name and address or telephone number, or other information that allows the third-party to identify the consumer; (3) the information furnished to the third-party contains, with respect to the extension of credit for which the consumer has applied, any identification of the amount of credit for which the consumer has applied or any other information that is related to the terms and conditions of credit for which the consumer has applied and that is not generally available to the public; and (4) the consumer has not authorized the consumer reporting agency or personal financial data provider to provide the information to the third-party and has not initiated any credit transaction with the third-party. The bill incorporates various federal law definitions from the FCRA. The bill also defines "personal financial data provider" as any person, other than a consumer reporting agency, that regularly engages in whole or in part in the practice of assembling and furnishing to third-parties, for a fee or payment of dues, the identity of particular consumers and financial information relating to such consumers that is not generally available to the public, including information derived from any application by these consumers for an extension of credit or other nonpublic personal information, as defined under the federal Gramm-Leach-Bliley Act, relating to these consumers.

Under the bill, if any trigger lead is not a prescreened consumer report under federal law, a person, which includes a business entity, may not furnish the trigger lead to a nonaffiliated third-party unless the person reasonably believes that the third-party will not use the trigger lead to solicit any consumer identified in the trigger lead. Any person that furnishes such a trigger lead to a nonaffiliated third-party must establish and maintain procedures to reasonably ensure that the trigger lead will not be used to solicit any consumer identified in the trigger lead. A person that obtains such a trigger lead may not use the trigger lead to solicit any consumer identified in the trigger lead.

Under the bill, if any trigger lead is a prescreened consumer report under federal law, a person that obtains a trigger lead and uses the trigger lead to solicit any consumer identified in the trigger lead may not utilize unfair or deceptive practices in soliciting the consumer. Unfair or deceptive practices include all of the following: (1) failure to state in the initial phase of the solicitation that the person soliciting is not the lender, and is not affiliated with the lender, to which the consumer has applied for an extension of credit; (2) failure in the initial solicitation to comply with any applicable requirement under the FCRA relating to prescreened consumer reports; (3) knowingly or negligently utilizing information regarding consumers who have elected to be excluded from being the subject of prescreened consumer reports or who have registered under the federal or state do-not-call list programs; (4) soliciting consumers with offers of certain rates, terms, and costs, with intent to subsequently raise the rates or change the terms to the consumers' detriment; and (5) making false or misleading statements in connection with a credit transaction that is not initiated by the consumer.

Any person who violates any prohibition or requirement under the bill may be required to forfeit not less than \$100 nor more than \$1,000 for each violation. The

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Department of Agriculture, Trade and Consumer Protection (DATCP) must investigate violations of the prohibitions or requirements under the bill, and DATCP, the attorney general, or any district attorney may bring an action for these violations. In addition, any person aggrieved by a violation may bring a civil action for twice the amount of actual damages caused by the violation or \$500, whichever is greater.

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

1 **SECTION 1.** 100.55 of the statutes is created to read:

2 **100.55 Furnishing or using certain consumer loan information to**
3 **make solicitations. (1)** In this section:

4 (a) “Consumer” has the meaning given in 15 USC 1681a (c).

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

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

7 (d) “Lender” means any of the following:

8 1. A financial institution, as defined in s. 214.01 (1) (jn).

9 2. A finance company licensed under ss. 138.09 or 218.0101 to 218.0163.

10 3. A mortgage banker, loan originator, or mortgage broker registered under s.
11 224.72.

12 4. Any other person, not identified in subds. 1. to 3., the primary business of
13 which is to make loans or engage in lending activities in this state.

14 (e) “Nonaffiliated 3rd party” means a person that is not related by common
15 ownership or affiliated by common corporate control.

16 (f) “Person” has the meaning given in 15 USC 1681a (b).

17 (g) “Personal financial data provider” means any person, other than a
18 consumer reporting agency, that regularly engages in whole or in part in the practice
19 of assembling and furnishing to 3rd parties, for a fee or payment of dues, the identity

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1 of particular consumers and financial information relating to such consumers that
2 is not generally available to the public, including information derived from any
3 application by these consumers for an extension of credit or other nonpublic personal
4 information, as defined in 15 USC 6809 (4), relating to these consumers.

5 (h) “Prescreened consumer report” means a consumer report furnished by a
6 consumer reporting agency under authority of 15 USC 1681b (a) (3) (A) and (c) (1)
7 (B) to a person that the consumer reporting agency has reason to believe intends to
8 use the information in connection with any credit transaction that involves the
9 consumer on whom the information is to be furnished and that is not initiated by this
10 consumer.

11 (i) “Trigger lead” means information relating to a consumer that is furnished
12 by a consumer reporting agency or personal financial data provider to a nonaffiliated
13 3rd party if all of the following apply:

14 1. The consumer has applied to a lender, other than the 3rd party to whom the
15 information is furnished, for an extension of credit and the lender has provided the
16 consumer’s credit application, or information derived from or related to the
17 consumer’s credit application, to a consumer reporting agency or personal financial
18 data provider for purposes of obtaining a consumer report or otherwise evaluating
19 or rating the consumer’s creditworthiness.

20 2. The information furnished to the 3rd party includes the consumer’s name
21 and address or telephone number, or other information that allows the 3rd party to
22 identify the consumer.

23 3. The information furnished to the 3rd party contains, with respect to the
24 extension of credit for which the consumer has applied under subd. 1., any
25 identification of the amount of credit for which the consumer has applied or any other

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1 information that is related to the terms and conditions of credit for which the
2 consumer has applied and that is not generally available to the public.

3 4. The consumer has not authorized the consumer reporting agency or personal
4 financial data provider to provide the information to the 3rd party and has not
5 initiated any credit transaction with the 3rd party.

6 (j) “Solicit” means the initiation of a communication to a consumer for the
7 purpose of encouraging the consumer to purchase property, goods, or services or
8 apply for an extension of credit. “Solicit” does not include communications initiated
9 by the consumer or directed to the general public.

10 **(2)** (a) If any trigger lead is not a prescreened consumer report, no person may
11 furnish the trigger lead to a nonaffiliated 3rd party unless the person reasonably
12 believes that the 3rd party will not use the trigger lead to solicit any consumer
13 identified in the trigger lead.

14 (b) Any person that furnishes a trigger lead described in par. (a) to a
15 nonaffiliated 3rd party shall establish and maintain procedures to reasonably
16 ensure that the trigger lead will not be used to solicit any consumer identified in the
17 trigger lead. These procedures shall include requiring any person that obtains a
18 trigger lead described in par. (a) to identify the user of the trigger lead and to certify,
19 in a manner similar to that required under 15 USC 1681e (a), the purpose for which
20 the trigger lead is obtained and that the person will not use the trigger lead to solicit
21 any consumer identified in the trigger lead.

22 (c) No person that obtains a trigger lead described in par. (a) may use the trigger
23 lead to solicit any consumer identified in the trigger lead.

24 **(3)** (a) If any trigger lead is a prescreened consumer report, a person that
25 obtains a trigger lead and uses the trigger lead to solicit any consumer identified in

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1 the trigger lead may not utilize unfair or deceptive practices in soliciting the
2 consumer.

3 (b) For purposes of this subsection, unfair or deceptive practices include all of
4 the following:

5 1. Failure to state in the initial phase of the solicitation that the person
6 soliciting is not the lender, and is not affiliated with the lender, to which the
7 consumer has applied for an extension of credit.

8 2. Failure in the initial solicitation to comply with any applicable requirement
9 under 15 USC 1681b (a), (c), (e), and (f), 1681e (a), and 1681m (d).

10 3. Knowingly or negligently utilizing information regarding consumers who
11 have made an election under 15 USC 1681b (e) to be excluded from prescreened
12 consumer reports, who have registered their telephone numbers on the national
13 do-not-call registry as provided in 47 CFR 64.1200, or who are listed in the
14 nonsolicitation directory under s. 100.52 (2).

15 4. Soliciting consumers with offers of certain rates, terms, and costs, with
16 intent to subsequently raise the rates or change the terms to the consumers'
17 detriment.

18 5. Making false or misleading statements in connection with a credit
19 transaction that is not initiated by the consumer.

20 (4) (a) Any person who violates sub. (2) or (3) may be required to forfeit not less
21 than \$100 nor more than \$1,000 for each violation.

22 (b) The department shall investigate violations of this section. The
23 department, the attorney general, or any district attorney may on behalf of the state:

24 1. Bring an action for temporary or permanent injunctive or other relief for any
25 violation of this section. In such an action for injunctive relief, irreparable harm is

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1 presumed. The court may, upon entry of final judgment, award restitution when
2 appropriate to any person suffering loss because of a violation of this section if proof
3 of such loss is submitted to the satisfaction of the court.

4 2. Bring an action in any court of competent jurisdiction for the penalties
5 authorized under par. (a).

6 (c) In addition to any other remedies, any person aggrieved by a violation of sub.
7 (2) or (3) may bring a civil action for damages. In such an action, any person who
8 violates sub. (2) or (3) shall be liable for twice the amount of actual damages caused
9 by the violation or \$500, whichever is greater, and, notwithstanding s. 814.04 (1), the
10 costs of the action, including reasonable attorney fees. In such an action, the court
11 may also award any equitable relief that the court determines is appropriate.

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(END)