

2013 DRAFTING REQUEST

Bill

Received: 2/6/2013 Received By: mkunkel
Wanted: As time permits Same as LRB:
For: Jeff Stone (608) 266-8590 By/Representing: himself
May Contact: Drafter: mkunkel
Subject: Trade Regulation - other Addl. Drafters:
Extra Copies: MPG

Submit via email: YES
Requester's email: Rep.Stone@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Consumer credit report "security freezes" by parents and guardians

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 3/6/2013	kfollett 3/6/2013	jfrantze 3/6/2013	_____			
/P1	mkunkel 5/7/2013			_____	lparisi 3/6/2013		
/P2	mkunkel 5/16/2013	kfollett 5/8/2013	jmurphy 5/8/2013	_____	lparisi 5/8/2013		
/1		kfollett	jmurphy	_____	sbasford	mbarman	State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
		5/17/2013	5/17/2013	_____	5/17/2013	6/3/2013	

FE Sent For:

↳ At
Intro.

<END>

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/1		kfollett	jmurphy	_____	sbasford		State

Handwritten notes: "Jacketed" and "see attached" in circles.

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115f
5/17

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/P1		1P2kjf 5/8	gm 5/8	jm + RS 5/8	lparisi 3/6/2013		

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GMM
ARG ✓

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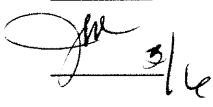
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/?	mkunkel	1/15/13 3/6	3/6	 3/6			

FE Sent For:

<END>

Kunkel, Mark

From: Kunkel, Mark
Sent: Friday, February 01, 2013 4:54 PM
To: Phillips, Justin
Subject: FW: 2005 ACT 140

The first sentence below should have referred to the Utah Attorney *General*.

From: Kunkel, Mark
Sent: Friday, February 01, 2013 4:51 PM
To: Phillips, Justin
Subject: RE: 2005 ACT 140

Justin:

It looks like Utah hasn't passed any legislation. Instead, the Utah Attorney has established a program with one credit reporting agency, TransUnion. Under that program, a parent can enroll a child, and, upon enrollment, TransUnion takes proprietary fraud prevention steps, including entering the child in its "High Risk Fraud database" until the child's 17th birthday.

Maryland, as you know, has enacted legislation that allows a parent of a child or guardian of an individual to request a "security freeze" for the child or individual. (I've summarized the key provisions at the end of this email.) The Maryland legislation is very detailed, in that includes specific requirements on how to request a freeze, how soon a credit reporting agency (CRA) must respond to the request, and how long the freeze remains in effect. The requirements appear to be fairly consistent with the rather detailed requirements under current Wisconsin law for an individual to request a security freeze. See s. 100.54.

If you want to follow Maryland's approach, I can draft changes to Wisconsin law that incorporate the Maryland law. The Wisconsin law could contain details that are comparable to the Maryland law. On the other hand, you could direct DATCP to promulgate rules that allow parents and guardians to obtain security freezes. Under that approach, DATCP would fill in the details with its rules. Another alternative would be to require the Wisconsin Attorney General to work with CRAs to establish a program comparable to the Utah Attorney General's program.

We could do any of the above, or, if you have other ideas, we could pursue those. Please let me know how to proceed.

--Mark

Maryland Commercial Law s. 14-1212.2

In general. The Maryland law requires to a consumer reporting agency (CRA) to place a security freeze for a protected consumer upon request by the protected consumer's representative, if the representative provides sufficient proof of identification of the protected consumer, as well as proof of sufficient authority to act on behalf of the protected consumer, and pays a fee to the CRA. If the CRA does not have a file pertaining to the protected consumer, the CRA must create a "record" for the protected consumer. The CRA must place the security freeze or create the record within 30 days of receiving a request.

Unless a security freeze is removed as provided under the Maryland law, a CRA may not release the protected consumer's consumer report, any information derived from the protected consumer's consumer report, or any record created for the protected consumer. A security freeze remains in effect until the protected consumer or the protected consumer's representative requests the CRA to remove the freeze. Within 30 days after such a request, the CRA must remove the security freeze or delete the record. In addition, a CRA can remove a security freeze or delete a record if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

Key Definitions.

“Protected consumer” is as an individual who is 16 or under or is an incapacitated person or a protected person for whom a guardian or conservator has been appointed under Maryland law.

“Record” is defined as a compilation of information created for the sole purpose of complying with the Maryland law that identifies a protected consumer and that “may not be created or used to consider the protected consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living for any purpose listed in § 14-1201(d)(1) of this subtitle.”

NOTE: Maryland Commercial Code s. 14-1201 (d) (a) defines "consumer report" as “any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which 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: (i) Credit or insurance to be used primarily for personal, family, or household purposes; (ii) Employment purposes; or (iii) Other purposes authorized under § 14-1202 of this subtitle.” Commercial Law s. 14-1202 sets forth permissible uses for consumer reports.

"Sufficient proof of authority" is defined to include a court order, power of attorney, or written and notarized statement expressly describing the authority of a representative to act on behalf of a protected consumer.

"Sufficient proof of identification" is defined to include a Social Security number or a copy of a Social Security card, a certified or official copy of a birth certificate, a copy of a driver's license or state-issued identification card, or a copy of a bill that shows a name and home address.

Fees. With certain exceptions, a CRA may charge a representative a fee not exceeding \$5 for placing or lifting a security freeze or creating or deleting a record. However, a CRA may not charge any fee if the representative provides the CRA with an identity theft report regarding the protected consumer. Also, no fee may be charged for a protected consumer who is child under 16, if the CRA already has a credit report pertaining to the child.

Exceptions. The Maryland law includes exceptions that provide that the following are allowed to access a protected consumer’s credit report or record: 1) a person who administers a credit file monitoring subscription service to which the protected consumer or consumer’s representative has subscribed; 2) persons who provide copies of consumer reports or records upon request of a protected consumer or representative; 3) a check services or fraud prevention services company; 4) a deposit account information service company; or 5) a CRA that acts only as a reseller of credit information by assembling and merging information contained in a database of another consumer reporting agency or multiple consumer reporting agencies, and that does not maintain a permanent database of credit information from which new consumer reports are produced.

Enforcement and penalties. The Maryland law provides that the exclusive remedy for a violation is for a consumer to file a complaint with the Commissioner of Financial Regulation of the Department of Labor, Licensing, and Regulation. If a CRA violates the law, the commissioner may impose a civil penalty of no more than \$100 for each violation.

From: Phillips, Justin
Sent: Friday, January 25, 2013 3:23 PM
To: Kunkel, Mark
Subject: RE: 2005 ACT 140

That is fine thanks.

Utah also has a plan to help protect children's credit. <http://www.deseretnews.com/article/705398445/Utah-AG-launches-program-to-prevent-child-identity-theft.html?pg=all>

Their system is run through the AG's office.

--

Justin Phillips

Office of Representative Stone

82nd Assembly District

(608) 266-8590

From: Kunkel, Mark

Sent: Friday, January 25, 2013 3:21 PM

To: Phillips, Justin

Subject: RE: 2005 ACT 140

Justin:

Yes, I will be the drafter for this request.

I will take a look at the Maryland law and see how it can be incorporated into the Wisconsin law. I can do that early next week and get back to you by the middle of next week. Is that okay?

--Mark

From: Phillips, Justin

Sent: Friday, January 25, 2013 3:02 PM

To: Kunkel, Mark

Subject: 2005 ACT 140

Mark-

Legis Council suggested I reach out to you:

Rep Stone recently, met with DATCP after learning about Maryland HB 555, which is a bill that will allow parents to freeze their child's credit. Currently children are 16x more likely to have their credit stolen.

Council told me that in 2005 you were the drafter of 2005's Act 140

(https://docs.legis.wisconsin.gov/2005/related/acts/140/_1) so I should reach out to you as someone who may be able to provide guidance on amending this law to allow for Parents to have the option to freeze their child's credit while they're young

While Rep Stone is still in the process of trying to figure out how best to allow parents this option, he was hoping for some guidance on what can be done to move forward

HB555 bill overview <http://mgaleg.maryland.gov/webmga/frmMain.aspx?ys=2012rs/billfile/hb0555.htm>

HB555 Language http://mgaleg.maryland.gov/2012rs/chapters_noln/Ch_209_hb0555T.pdf

Thanks for your time

justin

--

Justin Phillips

Office of Representative Stone

Maryland law

§ 14-1212.2. Security freeze by consumer reporting agency

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Protected consumer" means an individual who is:

(i) Under the age of 16 years at the time a request for the placement of a security freeze is made; or

(ii) An incapacitated person or a protected person for whom a guardian or conservator has been appointed in accordance with Title 13 of the Estates and Trusts Article.

(3) "Record" means a compilation of information that:

(i) Identifies a protected consumer;

(ii) Is created by a consumer reporting agency solely for the purpose of complying with this section; and

(iii) May not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living for any purpose listed in § 14-1201(d)(1) of this subtitle.

(4) "Representative" means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

(5) "Security freeze" means:

(i) If a consumer reporting agency does not have a file pertaining to a protected consumer, a restriction that:

1. Is placed on the protected consumer's record in accordance with this section; and

2. Prohibits the consumer reporting agency from releasing the protected consumer's record except as provided in this section; or

(ii) If a consumer reporting agency has a file pertaining to the protected consumer, a restriction that:

1. Is placed on the protected consumer's consumer report in accordance with this section; and

2. Prohibits the consumer reporting agency from releasing the protected consumer's consumer report or any information derived from the protected consumer's consumer report except as provided in this section.

(6) (i) "Sufficient proof of authority" means documentation that shows a representative has authority to act on behalf of a protected consumer.

(ii) "Sufficient proof of authority" includes:

1. An order issued by a court of law;
2. A lawfully executed and valid power of attorney; and
3. A written, notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected consumer.

(7) (i) "Sufficient proof of identification" means information or documentation that identifies a protected consumer or a representative of a protected consumer.

(ii) "Sufficient proof of identification" includes:

1. A Social Security number or a copy of a Social Security card issued by the Social Security Administration;
2. A certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate;
3. A copy of a driver's license, an identification card issued by the Motor Vehicle Administration, or any other government-issued identification; or
4. A copy of a bill, including a bill for telephone, sewer, septic tank, water, electric, oil, or natural gas services, that shows a name and home address.

(b) Applicability. -- This section does not apply to the use of a protected consumer's consumer report or record by:

(1) A person administering a credit file monitoring subscription service to which:

(i) The protected consumer has subscribed; or

(ii) The representative of the protected consumer has subscribed on behalf of the protected consumer;

(2) A person providing the protected consumer or the protected consumer's representative with a copy of the protected consumer's consumer report on request of the protected consumer or the protected consumer's representative; or

(3) An entity listed in § 14-1212.1(b)(2)(i) or (ii) or (c)(5) of this subtitle.

(c) In general. --

(1) A consumer reporting agency shall place a security freeze for a protected consumer if:

(i) The consumer reporting agency receives a request from the protected consumer's representative for the placement of the security freeze under this section; and

(ii) The protected consumer's representative:

1. Submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;

2. Provides to the consumer reporting agency sufficient proof of identification of the protected consumer and the representative;

3. Provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer; and

4. Pays to the consumer reporting agency a fee as provided in subsection (i) of this section.

(2) If a consumer reporting agency does not have a file pertaining to a protected consumer when the consumer reporting agency receives a request under paragraph (1) of this subsection, the consumer reporting agency shall create a record for the protected consumer.

(d) Timing. -- Within 30 days after receiving a request that meets the requirements of subsection (c)(1) of this section, a consumer reporting agency shall place a security freeze for the protected consumer.

(e) Release of consumer report prohibited. -- Unless a security freeze for a protected consumer is removed in accordance with subsection (g) or (j) of this section, a consumer reporting agency may not release the protected consumer's consumer report, any information derived from the protected consumer's consumer report, or any record created for the protected consumer.

(f) Period of security freeze. -- A security freeze for a protected consumer placed under subsection (d) of this section shall remain in effect until:

(1) The protected consumer or the protected consumer's representative requests the consumer reporting agency to remove the security freeze in accordance with subsection (g) of this section; or

(2) The security freeze is removed in accordance with subsection (j) of this section.

(g) Removal of security freeze. -- If a protected consumer or a protected consumer's representative wishes to remove a security freeze for the protected consumer, the protected consumer or the protected consumer's representative shall:

(1) Submit a request for the removal of the security freeze to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;

(2) Provide to the consumer reporting agency:

(i) In the case of a request by the protected consumer:

1. Proof that the sufficient proof of authority for the protected consumer's representative to act on behalf of the protected consumer is no longer valid; and

2. Sufficient proof of identification of the protected consumer; or

(ii) In the case of a request by the representative of a protected consumer:

1. Sufficient proof of identification of the protected consumer and the representative; and

2. Sufficient proof of authority to act on behalf of the protected consumer; and

(3) Pay to the consumer reporting agency a fee as provided in subsection (i) of this section.

(h) Removal of security freeze -- Timing. -- Within 30 days after receiving a request that meets the requirements of subsection (g) of this section, the consumer reporting agency shall remove the security freeze for the protected consumer.

(i) Fees. --

(1) Except as provided in paragraph (2) of this subsection, a consumer reporting agency may not charge a fee for any service performed under this section.

(2) A consumer reporting agency may charge a reasonable fee, not exceeding \$ 5, for each placement or removal of a security freeze for a protected consumer.

(3) Notwithstanding paragraph (2) of this subsection, a consumer reporting agency may not charge any fee under this section if:

(i) The protected consumer's representative:

1. Has obtained a report of alleged identity fraud against the protected consumer under § 8-304 of the Criminal Law Article or an identity theft passport under § 8-305 of the Criminal Law Article; and

2. Provides a copy of the report or passport to the consumer reporting agency; or

(ii) 1. A request for the placement or removal of a security freeze is for a protected consumer who is under the age of 16 years at the time of the request; and

2. The consumer reporting agency has a consumer report pertaining to the protected consumer.

(j) Effect of material misrepresentation of fact. -- A consumer reporting agency may remove a security freeze for a protected consumer or delete a record of a protected consumer if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

(k) Remedy for violation of section. -- Notwithstanding any other provision of law, the exclusive remedy for a violation of this section shall be a complaint filed with the Commissioner under § 14-1217 of this subtitle.

§ 14-1217. Consumer complaints

(a) Filing with Commissioner. -- Any consumer who has reason to believe that this subtitle, or any other law regulating consumer credit reporting, has been violated by any person may file with the Commissioner a complaint setting forth the details of an alleged violation.

(b) Inspection of books, records, etc., by Commissioner. -- After receipt of the complaint, the Commissioner may inspect the pertinent books, records, letters and contracts of any agency, and of any person who has furnished information to the agency relating to the specific written complaint.

HISTORY: 2012, chs. 208, 209.

NOTES: EDITOR'S NOTE. --Section 2, chs. 208 and 209, Acts 2012, provides that the Act shall take effect January 1, 2013.

§ 14-1218. Enforcement

(a) Powers of Commissioner. -- The Commissioner may:

(1) Hold a hearing on the complaint at a time and place in this State reasonably convenient to the parties involved;

(2) Subpoena witnesses;

(3) Take depositions of witnesses residing without the State, in the manner provided for witnesses in civil actions in courts of record;

(4) Administer oaths;

(5) Issue orders for compliance with this subtitle;

(6) Issue cease and desist orders, if after a hearing the Commissioner finds a pattern and practice of violation of this subtitle; and

(7) If a consumer reporting agency that has violated any law regulating consumer credit reporting fails to comply with a lawful order of the Commissioner, impose a civil penalty of up to \$ 100 for each violation from which the violator failed to cease and desist or for which the violator failed to take action ordered by the Commissioner for compliance with the law. In determining the amount of civil penalty to be imposed under this paragraph, the Commissioner shall consider:

(i) The seriousness of the violation;

(ii) The good faith of the violator;

(iii) The violator's history of previous violations;

(iv) The deleterious effect of the violation upon the public and the credit granting industry;

(v) The assets and financial status of the violator; and

(vi) Any other factors relevant to the determination of the financial penalty.

(b) Court enforcement. -- If a person fails to comply with any lawful order of the Commissioner pursuant to this subtitle or if any witness fails to appear and testify to any matter regarding which the witness may be lawfully interrogated, on petition of the Commissioner setting forth the facts, the circuit court of any county shall:

(1) Compel obedience to the requirements of the subpoena or order;

(2) Compel the production of contracts, forms, files, and other evidence; and

(3) Order compliance with any lawful order issued by the Commissioner under the provisions of subsection (a) (5) or subsection (a) (6) of this section.

(c) Contempt. -- If a person fails, refuses, or neglects to comply with the order of the court, the court may punish that person for contempt of court.

(d) Application of Administrative Procedure Act. -- The Administrative Procedure Act, including its provisions for judicial review of a final decision in a contested case, applies to proceedings before the Commissioner pursuant to this subtitle.

(e) Regulations. --

(1) The Commissioner shall adopt regulations necessary to administer the provisions of this subtitle.

(2) The regulations shall include procedures for:

(i) Achieving accuracy in information collected and maintained in consumer files;

(ii) Developing a system to facilitate correction of information in a consumer file at each credit reporting agency on correction at one consumer reporting agency; and

(iii) Periodically distributing to the public a current listing of the names, addresses, and telephone numbers of consumer reporting agencies that maintain information or provide consumer reports on residents of the State.

HISTORY: 1976, ch. 584; 1982, ch. 820, § 3; 1984, ch. 255; 1992, ch. 441; 1995, ch. 368; 2005, ch. 25, § 13.

Md. CRIMINAL LAW Code Ann. § 8-304 (2012)

§ 8-304. Report

(a) Contact local law enforcement agency. -- A person who knows or reasonably suspects that the person is a victim of identity fraud, as prohibited under this subtitle, may contact a local law enforcement agency that has jurisdiction over:

(1) any part of the county in which the person lives; or

(2) any part of the county in which the crime occurred.

(b) Preparation of report. -- After being contacted by a person in accordance with subsection (a) of this section, a local law enforcement agency shall promptly:

(1) prepare and file a report of the alleged identity fraud; and

(2) provide a copy of the report to the victim.

(c) Referring matter to another law enforcement agency. -- The local law enforcement agency contacted by the victim may subsequently refer the matter to a law enforcement agency with proper jurisdiction.

(d) Not included as open case. -- A report filed under this section is not required to be counted as an open case for purposes including compiling open case statistics.

§ 8-305. Identity theft passports.

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Identity fraud" means a violation of § 8-301 of this subtitle.

(3) "Identity theft passport" means a card or certificate issued by the Attorney General that verifies the identity of the person who is a victim of identity fraud.

(b) In general. -- A person who knows or reasonably suspects that the person is a victim of identity fraud and has filed a report under § 8-304 of this subtitle may apply for an identity theft passport through a law enforcement agency.

(c) Processing. -- A law enforcement agency that receives an application for an identity theft passport shall submit the application and a copy of the report filed under § 8-304 of this subtitle to the Attorney General for processing and issuance of an identity theft passport.

(d) Issuance. --

(1) The Attorney General, in cooperation with a law enforcement agency, may issue an identity theft passport to a person who is a victim of identity fraud.

(2) The Attorney General may not issue an identity theft passport to a person before completing a background check on the person.

(e) Use. -- A person who is issued an identity theft passport under subsection (d) of this section may present the identity theft passport to:

(1) a law enforcement agency to help prevent the arrest or detention of the person for an offense committed by another using the person's personal identifying information; or

(2) a creditor to aid in the investigation of:

(i) a fraudulent account that is opened in the person's name; or

(ii) a fraudulent charge that is made against an account of the person.

(f) Acceptance or rejection of passport. --

(1) A law enforcement agency or creditor that is presented with an identity theft passport under subsection (e) of this section has sole discretion to accept or reject the identity theft passport.

(2) In determining whether to accept or reject the identity theft passport, the law enforcement agency or creditor may consider the surrounding circumstances and available information regarding the offense of identity fraud against the person.

(g) Confidentiality. -- An application for an identity theft passport submitted under this section, including any supporting documentation:

(1) is not a public record; and

(2) may not be released except to a law enforcement agency in this or another state.

(h) Regulations. -- The Attorney General shall adopt regulations to carry out the provisions of this section.



MARYLAND ATTORNEY GENERAL
Douglas F. Gansler

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For Immediate Release

Media Contacts:

David Paulson, 410-576-6357
dpaulson@oag.state.md.us

Alan Brody, 410-576-6956
abrody@oag.state.md.us

AG Gansler Promotes New Child ID Theft Law that Takes Effect Jan. 1

*Parents, guardians can place security freeze on
minor's credit records*

Baltimore, MD (Dec. 27, 2012) - Attorney General Douglas F. Gansler encouraged parents and legal guardians in Maryland to protect children against identity theft by taking advantage of a new law that takes effect January 1.

"Too many children are victimized by relatives and other individuals who attempt to exploit a child's clean credit history to obtain a credit card, mobile phone or utility account," said Gansler. "As a result, children end up having to deal with a blemished credit record once they are old enough to seek credit on their own."

The law, unanimously approved in both chambers of the General Assembly and strongly supported by the Attorney General's Consumer Protection Division, allows parents and legal guardians to place a security freeze on their minor child's credit records that would prevent identity thieves from opening credit accounts in the child's name.

A study published in 2011 by Carnegie Mellon University's CyLab found more than 10 percent of Social Security numbers belonging to minors already have an active credit record, with 76 percent of the credit activity being fraudulent. About one in 10 victims who contact the Maryland Attorney General's Identity Theft Unit are individuals who discover upon first seeking credit that someone had already opened a credit account using their name or Social Security number.

A child should not have a credit record unless someone has fraudulently opened a credit account in the child's name. If the child has a credit record, the new law allows a parent to freeze the child's credit record so that someone seeking to open new credit in the child's name cannot access the credit report. If the child does not have a credit record, the parent may request that a credit reporting agency create a record that prohibits the agency from releasing information about the child to potential creditors. The new law similarly allows a guardian to place a freeze on the credit record of an individual under their care.

Parents or guardians may contact the three major credit reporting agencies to place a freeze:

Equifax:

Submit a freeze request online on behalf of a minor at www.equifax.com, call 1-800-685-1111, or write to:

Equifax Security Freeze,
P.O. Box 105788,
Atlanta, GA 30348.

The requestor must submit their complete name, address, copy of a Social Security Card, or an official copy of a birth certificate, or a copy of a driver's license, or any other government-issued identification, or a copy of a utility bill that shows name and home address. The same information is required of the minor on whom the freeze is being requested. Other information may also be required.

Experian:

Submit a freeze request online on behalf of a minor at <http://www.experian.com/consumer/help/states/md.html>, or write to:

Experian
P.O. Box 9554,
Allen, TX 75013

TransUnion:

Submit a freeze request online on behalf of a minor at <http://www.transunion.com/personal-credit/credit-disputes/credit-freezes.page>, call 888-909-8872 or write to:

TransUnion Protected Consumer Freeze
PO Box 380,
Woodland, PA 19094

More information about protecting yourself against identity theft or what to do if you've been a victim of identity theft is available on the Attorney General's website, www.oag.state.md.us/idtheft, or by calling the Attorney General's Identity Theft Unit at 410-576-6491.

Attorney General Gansler thanked State Senators John Astle, Kathy Klausmeier and President Mike Miller, as well as State Delegate Craig Zucker for their leadership on the legislation during the 2012 General Assembly.

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Utah Attorney General launches program to prevent child identity theft

By Dennis Romboy, Deseret News
Published: Tuesday, Jan. 31 2012 4:05 p.m. MST

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SALT LAKE CITY — Jennifer Andrushko didn't know what to think when government records listed her 3-year-old son as an employee at a clothing store.

While checking on her husband's unemployment eligibility at the Utah Department of Workforce Services two years ago, the Harrisville mother learned an undocumented immigrant had been using her son's Social Security number five years before he was born.

"As you can imagine, I was very shocked and surprised," she said. "I didn't think this would ever happen to me or my child."

Andrushko said she felt helpless and didn't know where to turn.

The Utah Attorney General's Office hopes a new program it launched Tuesday will prevent situations like the Andrushkos'.

The Child Identity Protection program offers a secure online site, www.idtheft.utah.gov, where parents and guardians can register their children for protection from identity theft at no cost.

"We've done a lot to protect adults. Identity thieves know that so they come after these little ones, said Utah Attorney General Mark Shurtleff, surrounded by now 5-year-old Carter Andrushko and several other children.

The attorney general's office worked with TransUnion, one of the three national credit reporting companies, to create the program.

"These steps really enable us and the state of Utah to protect minors to a degree never before available," said Steve Katz, TransUnion director of consumer services.

Once enrolled, TransUnion adds the child's Social Security number to a database it uses to alert creditors about potential fraud risk when requests for credit reports are received. It remains there until the child reaches 17.

Also, if TransUnion determines that a credit file containing both the child's Social Security number and

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name has been created, it purges the file of any fraudulent information and doesn't allow access until the child's 17th birthday.

After finding out Carter's identity had been stolen, Andrushko initially didn't know where to turn. She finally contacted her state senator who put her in touch with the attorney general's office. She said she was thankful that her husband, Mike, was out of work for a while because they never would have known.

"I knew it could be quite damaging to him later in life," she said, adding she hopes parents will use the program so they don't have to go through the same ordeal.

E-mail: romboy@desnews.com Twitter: dennisromboy

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Dennis Romboy

Dennis Romboy is a reporter for Deseret News where for the past 20 years he has covered a variety of beats including state and local government, human services and the 2002 Olympics. He spent six years as a special more ..

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Kunkel, Mark

From: Kunkel, Mark
Sent: Wednesday, February 06, 2013 4:37 PM
To: Kunkel, Mark
Subject: Rep. Stone security freeze request

Mike Gallagher and I met with Rep. Stone and his aide Justin Philips today. Rep. Stone would like a bill that is similar to the Maryland law that allows a parent or guardian to place a security freeze on a minor child's or protected person's credit information. The freeze would prohibit a credit reporting agency (CRA) from releasing any information about the child or protected person. A security freeze should be allowed even if a CRA does not yet have any credit information about the child or protected person. The Maryland has been criticized for imposing security freezes only if a CRA has already opened a file on a child or protected person. I told Rep. Stone that, based on my reading of the Maryland law, that criticism is not accurate, as I think the Maryland law requires freezes even if a CRA has not yet opened a file. I told Rep. Stone that I would try to contact someone in Maryland to confirm my interpretation.

The bill should follow current Wisconsin law on security freezes as much as possible (e.g., same procedure, same fees, individual – not state agency – is in charge of initiating a freeze). However, a security freeze should be available only for a child or protected person who has been issued a social security number (SSN). The rationale is that, without a SSN, there is less likelihood of identity theft.

Kunkel, Mark

From: Phillips, Justin
Sent: Tuesday, February 12, 2013 3:51 PM
To: Kunkel, Mark
Cc: Gallagher, Michael
Subject: RE: New child ID theft law

If the criticism of the Maryland law is mistaken, lets get a version of the Maryland bill as it fits into WI law drafted
Thanks!

--

Justin Phillips

Office of Representative Stone
82nd Assembly District

(608) 266-8590

From: Kunkel, Mark
Sent: Monday, February 11, 2013 5:06 PM
To: Phillips, Justin
Cc: Gallagher, Michael
Subject: FW: New child ID theft law

Justin:

As you can see below, I contacted Steve Sakamoto-Wengel of the Maryland Attorney General's office about the criticism made in the Huffington Post article. He pointed out that the criticism is based on an Associated Press report that describes Maryland law *prior* to legislative action that required freezes even in cases where a credit reporting agency has not yet opened a file on a child. Thus, it looks like the Huffington Post writer's criticism on this point is mistaken.

As we discussed, I will prepare a draft based on the Maryland law which will require freezes whether or not a file has been opened on a child.

--Mark

From: Sakamoto-Wengel, Steve [<mailto:stevesw@oag.state.md.us>]
Sent: Monday, February 11, 2013 4:29 PM
To: Kunkel, Mark
Cc: Brody, Alan
Subject: RE: New child ID theft law

Thanks. The credit freeze is mandatory if the parent or guardian meets the criteria set forth in the law. The use of "may" in the press release was not intended to suggest that the freeze is discretionary on the part of the credit reporting agency but only that a parent is authorized to request the record/freeze.

The Huffington Post article was discussing Maryland law as it existed prior to the enactment of this statute.

Hope that helps.

Steven M. Sakamoto-Wengel
Consumer Protection Counsel for Regulation,

Legislation and Policy
Consumer Protection Division
200 St. Paul Place, 16th floor
Baltimore, MD 21202
(410) 576-6307
Fax: (410) 576-6566
stevesw@oag.state.md.us



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From: Kunkel, Mark [<mailto:Mark.Kunkel@legis.wisconsin.gov>]
Sent: Monday, February 11, 2013 4:55 PM
To: Sakamoto-Wengel, Steve
Subject: New child ID theft law

Mr. Sakamoto-Wengel:

I work in the legislative drafting agency for the Wisconsin legislature and have been asked to look at Maryland's recently passed law that allows a parent to place a security freeze on a minor child's credit records. Alan Brody suggested that I contact you about this issue.

I found the following statement about the Maryland law in a news article linked from the [huffingtonpost.com](http://www.huffingtonpost.com): "Under current Maryland law, credit agencies must place a security freeze on the credit of anyone who requests it. However, they can refuse to lock the credit of those who do not have a pre-existing credit report." The news report can be found here: http://www.huffingtonpost.com/2012/04/12/maryland-child-identity-theft_n_1421720.html

I don't think that statement is correct. Based on my reading of the Maryland law, if a parent requests a consumer reporting agency (CRA) to place a security freeze on behalf of a child for whom the CRA has not yet opened a file, the CRA **must** create a record for the child that prohibits the CRA from releasing any information about the child. However, the press release I mentioned above contains the following statement: "If [a] child does not have a credit record, the parent **may** request that a credit reporting agency create a record that prohibits the agency from releasing information about the child to potential creditors." (Emphasis added.) See <http://www.oag.state.md.us/Press/2012/122712a.html>

Perhaps I'm reading too much into the press release's use of the word "may" instead of "must." Or perhaps I haven't read the law properly. In any event, do you agree with my reading of the Maryland law, or can you direct me to someone in the Maryland Attorney General's office or another state agency who can help me interpret the law?

Thank for your assistance,

Mark D. Kunkel

• Senior Legislative Attorney

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O - NOTE

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

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-1533/P1

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Regen

1 AN ACT ~~to amend~~ 100.54 (2) (a) (intro.) and 2., 100.54 (2) (b) (intro.) and 2., 100.54
2 (3), 100.54 (4) (a) (intro.) and (b), 100.54 (5) (a), (b) and (c), 100.54 (6) (a) (intro.)
3 and (b), 100.54 (7) (b), 100.54 (8) (a) 1. a., (b), (g) and (h), 100.54 (9), 100.54 (10)
4 (a) and 100.54 (12); and **to create** 100.54 (1) (cs), (cv) and (f), 100.54 (2m),
5 100.54 (9) (c) and 100.54 (10) (c) of the statutes; **relating to:** allowing
6 representatives of certain protected individuals to restrict release of their
7 credit reports, providing an exemption from emergency rule procedures, and
8 requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

Current law, with certain exceptions, allows an individual to prohibit a consumer reporting agency (credit reporting agency) from releasing the individual's consumer report (credit report) for any purpose related to the extension of credit without the individual's prior authorization. If an individual makes a proper request to a credit reporting agency, provides proper identification, and pays any applicable fee, the credit reporting agency must include a "security freeze" on the individual's credit report. A credit reporting agency may not release an individual's credit report for an extension of credit if the report includes a security freeze. There are various exceptions to these requirements, including credit reporting agencies to which the

requirements do not apply and exceptions allowing a credit reporting agency to release an individual's credit report that includes a security freeze for specified purposes or under specified circumstances. Current law also includes procedures for an individual to authorize release of a credit report that includes a security freeze.

Under current law, if a credit report includes a security freeze, the credit reporting agency may not make changes in the report to the individual's name, date of birth, social security number, or address without providing written notice of the change to the individual. A credit reporting agency must remove a security freeze upon an individual's request, but may charge a fee to do so.

This bill allows a "representative" of a "protected individual" to obtain a security freeze on the protected individual's credit report. A "protected individual" is an individual: 1) who is less than 16 years of age (minor); 2) for whom a guardian of the estate or a conservator has been appointed; or 3) who has executed a durable power of attorney. A "representative" is: 1) a parent who has legal custody of a minor, the guardian or legal custodian of a minor, or a person delegated care and custody of a minor; 2) a guardian of the estate or conservator appointed for a protected individual; or 3) an agent of an individual under a durable power of attorney. In general, the same procedures and requirements apply to a representative acting on behalf of a protected individual as apply when an individual acts on his or her own behalf.

Under the bill, if a protected individual does not have a credit report, the representative may request that a credit reporting agency create a record for the protected individual and treat that record in the same manner as a credit report for purposes of placing a security freeze. If a representative of a minor requests a security freeze for the minor, the representative must notify the credit reporting agency when the minor has attained the age of 16 years. Upon receiving this notice, the credit reporting agency may not honor requests from the representative and any further requests or actions with respect to the individual who was formerly a minor must be made by that individual. If any other representative makes a request for a security freeze for a protected individual, and the guardianship, conservatorship, or durable power of attorney with respect to the protected individual is terminated, the representative must notify the credit reporting agency. Upon receiving this notice, the credit reporting agency may not honor requests from the representative and any further requests or actions with respect to the individual who was formerly a protected individual must be made by that individual or, if there is a successor representative, by the successor representative.

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

- 1 **SECTION 1.** 100.54 (1) (cs), (cv) and (f) of the statutes are created to read:
- 2 100.54 (1) (cs) "Protected individual" means any of the following:
- 3 1. An individual who is less than 16 years of age.

1 2. An individual for whom a guardian of the estate, as defined in s. 54.01 (11),
2 or a conservator, as defined in s. 54.01 (3), has been appointed.

3 3. An individual who has executed a durable power of attorney, as defined in
4 s. 244.02 (3).

5 (cv) “Representative” means any of the following:

6 1. A parent who has legal custody of a protected individual described in par. (cs)
7 1., the guardian or legal custodian of such a protected individual, or a person
8 delegated care and custody of such a protected individual under s. 48.979.

9 2. A guardian of the estate or conservator of a protected individual described
10 in par. (cs) 2.

11 3. An agent of a protected individual described in par. (cs) 3. under a durable
12 power of attorney.

13 (f) “Sufficient proof of a representative’s authority” means any of the following:

14 1. A court order granting guardianship or legal custody of a protected
15 individual described in par. (cs) 1. to the representative, a power of attorney under
16 s. 48.979 delegating care and custody of such a protected individual to the
17 representative, or a written, notarized statement signed by the representative that
18 expressly describes the authority of the representative to act on behalf of such a
19 protected individual.

20 2. Letters of guardianship or letters of conservatorship issued to the
21 representative naming the representative as the guardian of the estate or
22 conservator of a protected individual described in par. (cs) 2.

23 3. A durable power of attorney designating the representative as the agent of
24 a protected individual described in par. (cs) 3.

25 **SECTION 2.** 100.54 (2) (a) (intro.) and 2. of the statutes are amended to read:

SECTION 2

1 100.54 (2) (a) (intro.) Except as provided in par. (c), a consumer reporting
2 agency shall include a security freeze with an individual's consumer report if the
3 individual or the individual's representative does all of the following:

4 2. Provides the consumer reporting agency with proper identification. If the
5 individual is a protected individual, proper identification is required for both the
6 representative and the protected individual, along with sufficient proof of the
7 representative's authority to act for the protected individual under this section.

8 **SECTION 3.** 100.54 (2) (b) (intro.) and 2. of the statutes are amended to read:

9 100.54 (2) (b) (intro.) No later than 5 business days after an individual or the
10 individual's representative satisfies the requirements under par. (a) 1. to 3., a
11 consumer reporting agency shall include a security freeze with the individual's
12 consumer report. No later than 10 business days after including the security freeze
13 with the consumer report, the consumer reporting agency shall send the individual
14 and, if the individual is a protected individual, the individual's representative a
15 notice that does all of the following:

16 2. Includes a unique personal identification number, password, or other device
17 for the individual or the individual's representative to authorize release of the
18 consumer report.

19 **SECTION 4.** 100.54 (2m) of the statutes is created to read:

20 100.54 (2m) REPRESENTATIVE REQUEST FOR CREATION OF RECORD. (a) If a protected
21 individual does not have a consumer report, the individual's representative may
22 request that a consumer reporting agency create a record for the protected
23 individual. If the request satisfies the requirements in par. (b), the consumer
24 reporting agency shall create the record no later than 5 business days after these
25 requirements are satisfied. For purposes of this section, the consumer reporting

1 agency shall treat the record in the same manner as a consumer report and, after the
2 record is created or simultaneously with the request under this paragraph, the
3 representative may request a security freeze as provided under sub. (2).

4 (b) A representative that makes a request under par. (a) shall do all of the
5 following:

6 1. Send the request by certified mail to an address designated by the consumer
7 reporting agency, or send the request directly to the consumer reporting agency by
8 any other means that the consumer reporting agency may provide.

9 2. Provide the consumer reporting agency with proper identification for both
10 the representative and the protected individual, along with sufficient proof of the
11 representative's authority to act for the protected individual under this section.

12 (c) Paragraph (a) does not apply to a reseller or to any consumer reporting
13 agency identified in sub. (2) (c) 2. or 3.

14 **SECTION 5.** 100.54 (3) of the statutes is amended to read:

15 100.54 (3) PROHIBITION. Except as provided in sub. (8), if an individual's
16 consumer report includes a security freeze, a consumer reporting agency may not
17 release the consumer report to any person for any purpose related to the extension
18 of credit unless the individual or the individual's representative gives prior
19 authorization for the release under sub. (4).

20 **SECTION 6.** 100.54 (4) (a) (intro.) and (b) of the statutes are amended to read:

21 100.54 (4) (a) (intro.) An individual whose consumer report includes a security
22 freeze, or the individual's representative, may authorize a consumer reporting
23 agency to release the report by doing all of the following:

24 (b) If an individual or the individual's representative satisfies the requirements
25 under par. (a) 1. to 4., the consumer reporting agency shall release the individual

SECTION 6

1 consumer report during the time period specified by the individual or the individual's
2 representative, except that a consumer reporting agency is not required to release
3 a consumer report sooner than 3 business days after the individual or the individual's
4 representative contacts the consumer reporting agency under par. (a) 1. A consumer
5 reporting agency may establish procedures for releasing consumer reports sooner
6 than 3 business days for individuals who satisfy, or whose representatives satisfy, the
7 requirements under par. (a) 1. to 4. by telephone, facsimile, or the Internet, or by use
8 of other electronic media.

9 **SECTION 7.** 100.54 (5) (a), (b) and (c) of the statutes are amended to read:

10 100.54 (5) (a) The individual or the individual's representative authorizes the
11 release under sub. (4).

12 (b) The individual or the individual's representative requests removal of the
13 security freeze under sub. (6).

14 (c) The consumer reporting agency included a security freeze with the
15 consumer report due to a material misrepresentation of fact by the individual or the
16 individual's representative, if the consumer reporting agency notifies the individual
17 or the individual's representative in writing about the misrepresentation before the
18 consumer reporting agency releases the consumer report.

19 **SECTION 8.** 100.54 (6) (a) (intro.) and (b) of the statutes are amended to read:

20 100.54 (6) (a) (intro.) An individual or the individual's representative may
21 request removal of a security freeze included with the individual's consumer report
22 by doing all of the following:

23 (b) If an individual or the individual's representative requests removal of a
24 security freeze under par. (a), the consumer reporting agency shall remove the
25 security freeze from the individual's consumer report no later than 3 business days

1 after the individual or the individual's representative satisfies the requirements
2 under par. (a) 1. to 3. and the consumer reporting agency's release of the report is no
3 longer subject to this section.

4 **SECTION 9.** 100.54 (7) (b) of the statutes is amended to read:

5 100.54 (7) (b) This section does not prohibit a consumer reporting agency from
6 advising a 3rd party that an individual's consumer report includes a security freeze
7 and that the consumer reporting agency must obtain the individual's authorization,
8 or the authorization of the individual's representative, before releasing the
9 individual's consumer report.

10 **SECTION 10.** 100.54 (8) (a) 1. a., (b), (g) and (h) of the statutes are amended to
11 read:

12 100.54 (8) (a) 1. a. A person with whom the individual has, or had prior to
13 assignment, an account or contract, including a demand deposit account; a person
14 to whom the individual issued or is otherwise personally liable on a negotiable
15 instrument; or a person who otherwise has a legitimate business need for the
16 information in connection with a business transaction initiated by the individual or
17 the individual's representative; for the purpose of preventing or investigating
18 potential fraud or theft of identity, reviewing the account, collecting the financial
19 obligation owing for the account, contract, or negotiable instrument, or conducting
20 the business transaction.

21 (b) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person
22 to whom the consumer reporting agency has released the consumer report during the
23 time period authorized by the individual or the individual's representative under
24 sub. (4).

1 (g) A person administering a credit file monitoring subscription service or
2 similar service to which the individual or the individual's representative has
3 subscribed.

4 (h) A person for the purpose of providing an individual or the individual's
5 representative with a copy of ~~his or her~~ the individual's consumer report upon the
6 individual's request of the individual or the individual's representative.

7 **SECTION 11.** 100.54 (9) of the statutes is amended to read:

8 100.54 (9) FEES. (a) Except as provided in par. (b), a consumer reporting agency
9 may charge an individual or the individual's representative a fee of no more than \$10
10 each time that the individual or the individual's representative requests a security
11 freeze under sub. (2), authorizes release of a consumer report under sub. (4), or
12 requests removal of a security freeze under sub. (6).

13 (b) A consumer reporting agency may not charge a fee to an individual or the
14 individual's representative who submits evidence satisfactory to the consumer
15 reporting agency that the individual or the individual's representative made a report
16 to a law enforcement agency under s. 943.201 (4) regarding the individual's personal
17 identifying information or a personal identifying document. A copy of a law
18 enforcement agency's report under s. 943.201 (4) is considered satisfactory evidence
19 for purposes of this paragraph.

20 **SECTION 12.** 100.54 (9) (c) of the statutes is created to read:

21 100.54 (9) (c) A consumer reporting agency may not charge an individual or the
22 individual's representative a fee in connection with any request under sub. (2m).

23 **SECTION 13.** 100.54 (10) (a) of the statutes is amended to read:

24 100.54 (10) (a) Except as provided in par. (b), if a consumer reporting agency
25 includes a security freeze in an individual's consumer report, the consumer reporting

1 agency may not change the individual's name, date of birth, social security number,
2 or address in the report unless, within 30 business days of changing the information,
3 the consumer reporting agency sends written notice of the change to the individual
4 and, if the individual is a protected individual, to the individual's representative. If
5 the notice concerns a change of address, the consumer reporting agency shall send
6 the notice to both the new and former address.

7 **SECTION 14.** 100.54 (10) (c) of the statutes is created to read:

8 100.54 (10) (c) 1. If a representative described in sub. (1) (cv) 1. makes a request
9 for a security freeze under sub. (2), or a request to create a record under sub. (2m),
10 with respect to a protected individual described in sub. (1) (cs) 1., the representative
11 shall notify the consumer reporting agency when the protected individual has
12 attained the age of 16 years. Upon receiving this notice, the consumer reporting
13 agency may not honor requests from the representative and any further requests or
14 actions under this section with respect to the individual shall be made by the
15 individual.

16 2. If a representative described in sub. (1) (cv) 2. or 3. makes a request for a
17 security freeze under sub. (2), or a request to create a record under sub. (2m), with
18 respect to a protected individual described in sub. (1) (cs) 2. or 3., and the
19 guardianship, conservatorship, or durable power of attorney is terminated, the
20 representative shall notify the consumer reporting agency. Upon receiving this
21 notice, the consumer reporting agency may not honor requests from the
22 representative and any further requests or actions under this section with respect
23 to the protected individual shall be made by the individual or by a successor
24 representative.

25 **SECTION 15.** 100.54 (12) of the statutes is amended to read:

1 100.54 (12) RULES. The department shall promulgate rules specifying what
2 constitutes proper identification for purposes of subs. (2) (a) 2., (2m) (b) 2., (4) (a) 2.,
3 and (6) (a) 2. The rules shall be consistent with any requirements under federal
4 credit reporting law pertaining to proper identification.

5 **SECTION 16. Nonstatutory provisions.**

6 (1) PROPOSED PERMANENT RULES. The department of agriculture, trade and
7 consumer protection shall submit in proposed form the rules required under section
8 100.54 (12) of the statutes, as affected by this act, to the legislative council staff under
9 section 227.15 (1) of the statutes no later than the first day of the 4th month
10 beginning after the effective date of this subsection.

11 (2) RULE-MAKING EXCEPTIONS FOR PERMANENT RULES.

12 (a) Notwithstanding section 227.135 (2) of the statutes, the department of
13 agriculture, trade and consumer protection is not required to present the statement
14 of the scope of the rules required under section 100.54 (12) of the statutes, as affected
15 by this act, to the governor for approval.

16 (b) Notwithstanding section 227.185 of the statutes, the department of
17 agriculture, trade and consumer protection is not required to present the rules
18 required under section 100.54 (12) of the statutes, as affected by this act, in final draft
19 form to the governor for approval.

20 (c) Notwithstanding section 227.137 (2) of the statutes, the department of
21 agriculture, trade and consumer protection is not required to prepare an economic
22 impact analysis for the rules required under section 100.54 (12) of the statutes, as
23 affected by this act.

24 (d) Notwithstanding sections 227.14 (2g) and 227.19 (3) (e) of the statutes, the
25 department of agriculture, trade and consumer protection is not required to submit

1 the proposed rules required under section 100.54 (12) of the statutes, as affected by
2 this act, to the small business regulatory review board and is not required to prepare
3 a final regulatory flexibility analysis for those rules.

4 (3) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,
5 the department of agriculture, trade and consumer protection shall promulgate the
6 rules required under section 100.54 (12) of the statutes, as affected by this act, for
7 the period before the effective date of the permanent rules promulgated under
8 section 100.54 (12) of the statutes, as affected by this act, but not to exceed the period
9 authorized under section 227.24 (1) (c) of the statutes, subject to extension under
10 section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and
11 (3) of the statutes, the department is not required to provide evidence that
12 promulgating a rule under this subsection as an emergency rule is necessary for the
13 preservation of public peace, health, safety, or welfare and is not required to provide
14 a finding of an emergency for a rule promulgated under this subsection.
15 Notwithstanding section 227.24 (1) (e) 1d. and 1g. of the statutes, the department is
16 not required to prepare a statement of the scope of the rules promulgated under this
17 subsection or present the rules to the governor for approval.

18 **SECTION 17. Effective dates.** This act takes effect on the first day of the 4th
19 month beginning after publication, except as follows:

20 (1) SECTION 16 of this act takes effect on the day after publication.

21 (END)

D Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1532/P1dn
ARG:kjf:*

March 5, 2013

Date

-1533/pldn

Rep. Stone: please note the following:

Please review the attached draft carefully to ensure that it is consistent with your intent.

1. The substance of this draft is modeled after the Maryland law ~~and press release provided~~, but the details of the draft are tailored to the existing procedures for security freezes in Wisconsin under s. 100.54, stats., as well as Wisconsin law relating to "protected individuals."
2. Under current law, ~~what is~~ "proper identification" that must be presented to a credit reporting agency to obtain a security freeze ~~is established by rule~~. This bill requires DATCP to expand its rules to cover a new provision in the bill. Presumably DATCP will also update its existing rules to accommodate the other changes in the bill. The bill includes certain rule-making exceptions to expedite the rule-making process. With these exceptions, rule-making procedures and timelines would be similar to those that existed prior to the rule-making changes in 2011 Wisconsin Act 21.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft.

Aaron B. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

MDK

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1533/P1dn
MDK:kjf:jf

March 6, 2013

Rep. Stone:

Please review the attached draft carefully to ensure that it is consistent with your intent. Please note the following:

1. The substance of this draft is modeled after the Maryland law, but the details of the draft are tailored to the existing procedures for security freezes in Wisconsin under s. 100.54, stats., as well as Wisconsin law relating to "protected individuals."
2. Under current law, rules establish the "proper identification" that must be presented to a credit reporting agency to obtain a security freeze. This bill requires DATCP to expand its rules to cover a new provision in the bill. Presumably DATCP will also update its existing rules to accommodate the other changes in the bill. The bill includes certain rule-making exceptions to expedite the rule-making process. With these exceptions, rule-making procedures and timelines would be similar to those that existed prior to the rule-making changes in 2011 Wisconsin Act 21.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

LRB 1533
Re Pre draft

RW Stone
(Justin)

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SUBSTITUTE

An Act to amend § 100.54

TO AMEND CHAPTER 100.54, RELATING TO IDENTITY THEFT PROTECTION, BY ADDING SECTION Wis. Stat. Ann. § 100.54 (14), TO PROVIDE FOR CERTAIN MEASURES TO SAFEGUARD A CLASS OF "PROTECTED CONSUMERS" FROM BECOMING VICTIMS OF IDENTITY THEFT, TO ALLOW REPRESENTATIVES, PROVIDING SUFFICIENT PROOF OF AUTHORITY, TO PLACE A PREEMPTIVE SECURITY FREEZE ON PROTECTED CONSUMER'S CREDIT REPORTS, TO PROVIDE THE LIMITATIONS OF THIS SECTION, TO PROVIDE REQUIREMENTS TO IMPLEMENT A SECURITY FREEZE, TO PROVIDE FOR THE DURATION AND EXTENT OF A SECURITY FREEZE, AND TO PROVIDE TERMS FOR REMOVAL OF A SECURITY FREEZE ON A PROTECTED CONSUMER'S CREDIT REPORT OR RECORD.

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

SECTION 1. Chapter 100.54 of the Wisconsin Annotated Statutes is amended by adding:

"Section 100.54 (13) . (A) For purposes of this section:

(1) 'Protected consumer' means an individual who is:

(a) under the age of sixteen years at the time a request for the placement of a security freeze is made; or

→ (b) an incapacitated person or a protected person for whom a guardian or conservator has been appointed.

(2) 'Record' means a compilation of information that:

(a) identifies a protected consumer;

(b) is created by a consumer reporting agency solely for the purpose of complying with this section; and

1 (c) may not be created or used to consider the protected
2 consumer's credit worthiness, credit standing, credit capacity,
3 character, general reputation, personal characteristics, or mode of
4 living.

5 (3) 'Representative' means a person who provides to a
6 consumer reporting agency sufficient proof of authority to act on
7 behalf of a protected consumer.

8 (4) 'Security freeze' means:

9 (a) if a consumer reporting agency does not have a file
10 pertaining to a protected consumer, a restriction that:

11 (i) is placed on the protected consumer's record in
12 accordance with this section; and

13 (ii) prohibits the consumer reporting agency from
14 releasing the protected consumer's record except as provided in
15 this section; or

16 (b) if a consumer reporting agency has a file pertaining to
17 the protected consumer, a restriction that:

18 (i) is placed on the protected consumer's credit report
19 in accordance with this section; and

20 (ii) prohibits the consumer reporting agency from
21 releasing the protected consumer's credit report or any information
22 derived from the protected consumer's credit report except as
23 provided in this section.

24 (5) 'Sufficient proof of authority' means documentation that
25 shows a representative has authority to act on behalf of a protected
26 consumer and includes:

27 (a) an order issued by a court of law;

28 (b) a lawfully executed and valid power of attorney; or

29 (c) a written, notarized statement signed by a
30 representative that expressly describes the authority of the
31 representative to act on behalf of a protected consumer.

32 (6) 'Sufficient proof of identification' means information or
33 documentation that identifies a protected consumer or a
34 representative of a protected consumer and includes:

35 (a) a social security number or a copy of a social security
36 card issued by the social security administration;

37 (b) a certified or official copy of a birth certificate issued
38 by the entity authorized to issue the birth certificate; or

39 (c) a copy of a driver's license, an identification card
40 issued by the motor vehicle administration, or any other
41 government issued identification.

42 (B) This section does not apply to the use of a protected
43 consumer's credit report or record by:

1 (1) a person administering a credit file monitoring
2 subscription service to which:
3 (a) the protected consumer has subscribed; or
4 (b) the representative of the protected consumer has
5 subscribed on behalf of the protected consumer;
6 (2) a person providing the protected consumer or the
7 protected consumer's representative with a copy of the protected
8 consumer's credit report on request of the protected consumer or
9 the protected consumer's representative; or
10 (3) an entity exempt from placing a freeze under §
11 100.54(8)
12 (4) an insurance company for the purpose of conducting its
13 ordinary business; or
14 (5) a consumer reporting agency's database or file that consists
15 of information concerning, and used for, one or more of the
16 following, but not for credit granting purposes:
17 (a) criminal record information;
18 (b) fraud prevention or detection;
19 (c) personal loss history information; and
20 (d) employment, tenant, or individual background
21 screening.
22 (C)(1) A consumer reporting agency shall place a security
23 freeze for a protected consumer if:
24 (a) the consumer reporting agency receives a request from
25 the protected consumer's representative for the placement of the
26 security freeze under this section; and
27 (b) the protected consumer's representative:
28 (i) submits the request to the consumer reporting
29 agency at the address or other point of contact and in the manner
30 specified by the consumer reporting agency;
31 (ii) provides to the consumer reporting agency
32 sufficient proof of identification of the protected consumer and the
33 representative;
34 (iii) provides to the consumer reporting agency
35 sufficient proof of authority to act on behalf of the protected
36 consumer; and
37 (iv) pays to the consumer reporting agency a fee as
38 provided in subsection (1) of this section;
39 (2) if a consumer reporting agency does not have a file
40 pertaining to a protected consumer when the consumer reporting
41 agency receives a request under paragraph (1) of this subsection,
42 the consumer reporting agency shall create a record for the
43 protected consumer.

1 (D) Within thirty days after receiving a request that meets the
2 requirements of subsection (C)(1) of this section, a consumer
3 reporting agency shall place a security freeze for the protected
4 consumer.

5 (E) Unless a security freeze for a protected consumer is
6 removed in accordance with subsection (G) or (J) of this section, a
7 consumer reporting agency may not release the protected
8 consumer's credit report, any information derived from the
9 protected consumer's credit report, or any record created for the
10 protected consumer.

11 (F) A security freeze for a protected consumer placed under
12 subsection (D) of this section shall remain in effect until:

13 (1) the protected consumer or the protected consumer's
14 representative requests the consumer reporting agency to remove
15 the security freeze in accordance with subsection (G) of this
16 section; or

17 (2) the security freeze is removed in accordance with
18 subsection (J) of this section.

19 (G) If a protected consumer or a protected consumer's
20 representative wishes to remove a security freeze for the protected
21 consumer, the protected consumer or the protected consumer's
22 representative shall:

23 (1) submit a request for the removal of the security freeze to
24 the consumer reporting agency at the address or other point of
25 contact and in the manner specified by the consumer reporting
26 agency;

27 (2) provide to the consumer reporting agency:

28 (a) in the case of a request by the protected consumer:

29 (i) proof that the sufficient proof of authority for the
30 protected consumer's representative to act on behalf of the
31 protected consumer is no longer valid; and

32 (ii) sufficient proof of identification of the protected
33 consumer; or

34 (b) in the case of a request by the representative of a
35 protected consumer:

36 (i) sufficient proof of identification of the protected
37 consumer and the representative; and

38 (ii) sufficient proof of authority to act on behalf of the
39 protected consumer; and

40 (3) pay to the consumer reporting agency a fee as provided
41 in subsection (I) of this section.

42 (H) Within thirty days after receiving a request that meets the
43 requirements of subsection (G) of this section, the consumer

1 reporting agency shall remove the security freeze for the protected
2 consumer.

3 (I)(1) Except as provided in paragraph ~~(2)~~ of this subsection, a
4 consumer reporting agency may not charge a fee for any service
5 performed under this section.

6 (2) A consumer reporting agency may charge a reasonable
7 fee, not exceeding \$10, for each placement or removal of a security
8 freeze for a protected consumer.

9 (3) Notwithstanding paragraph (2) of this subsection, a
10 consumer reporting agency may not charge any fee under this
11 section if:

12 (a) the protected consumer's representative:

13 (i) has obtained a police report or affidavit of alleged
14 identity fraud against the protected consumer and

15 (ii) provides a copy of the report to the consumer
16 reporting agency; or

17 (b) a request for the placement or removal of a security
18 freeze is for a protected consumer who is under the age of sixteen
19 years at the time of the request; and the consumer reporting agency
20 has a consumer report pertaining to the protected consumer.

21 (J) A consumer reporting agency may remove a security freeze
22 for a protected consumer or delete a record of a protected
23 consumer if the security freeze was placed or the record was
24 created based on a material misrepresentation of fact by the
25 protected consumer or the protected consumer's representative."

26 (K) Notwithstanding any other provision of law, this section shall
27 be enforced solely by the attorney general."

28 SECTION 2. This act takes effect upon January 1, 2014.

29 ----XX----

30

Kunkel, Mark

From: Phillips, Justin
Sent: Wednesday, April 24, 2013 11:36 AM
To: Kunkel, Mark
Subject: FW: Wisconsin bill draft re credit freezes for children
Attachments: WI SUB.docx

Mark-
Here you go!

--
Justin Phillips

Office of Representative Jeff Stone
82nd Assembly District

(608) 266-8590

From: Anthony H. Driessen [<mailto:ahd@dewittross.com>]
Sent: Wednesday, April 24, 2013 11:32 AM
To: Phillips, Justin
Subject: FW: Wisconsin bill draft re credit freezes for children

Justin-
Please see the attached e-copy as you requested.

Best regards-

Tony

Anthony H. Driessen
Attorney
DeWitt Ross & Stevens S.C.
ahd@dewittross.com
Ph: 608-252-9387
F: 608-252-9243

DeWitt
Ross & Stevens 
www.dewittross.com

v-card >> bio >>

Two East Mifflin Street, Suite 600 | Madison, WI 53703-2865

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SUBSTITUTE

An Act to amend § 100.54

10

11 TO AMEND CHAPTER 100.54, RELATING TO IDENTITY
12 THEFT PROTECTION, BY ADDING SECTION Wis. Stat. Ann.
13 § 100.54 (14), TO PROVIDE FOR CERTAIN MEASURES TO
14 SAFEGUARD A CLASS OF "PROTECTED CONSUMERS"
15 FROM BECOMING VICTIMS OF IDENTITY THEFT, TO
16 ALLOW REPRESENTATIVES, PROVIDING SUFFICIENT
17 PROOF OF AUTHORITY, TO PLACE A PREEMPTIVE
18 SECURITY FREEZE ON PROTECTED CONSUMER'S
19 CREDIT REPORTS, TO PROVIDE THE LIMITATIONS OF
20 THIS SECTION, TO PROVIDE REQUIREMENTS TO
21 IMPLEMENT A SECURITY FREEZE, TO PROVIDE FOR THE
22 DURATION AND EXTENT OF A SECURITY FREEZE, AND
23 TO PROVIDE TERMS FOR REMOVAL OF A SECURITY
24 FREEZE ON A PROTECTED CONSUMER'S CREDIT
25 REPORT OR RECORD.

26

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

29

30 SECTION 1. Chapter 100.54 of the Wisconsin Annotated Statutes
31 is amended by adding:

32

33 "Section 100.54 (13) . (A) For purposes of this section:

34 (1) 'Protected consumer' means an individual who is:

35 (a) under the age of sixteen years at the time a request for
36 the placement of a security freeze is made; or

37 (b) an incapacitated person or a protected person for
38 whom a guardian or conservator has been appointed.

39 (2) 'Record' means a compilation of information that:

40 (a) identifies a protected consumer;

41 (b) is created by a consumer reporting agency solely for
42 the purpose of complying with this section; and

1 (c) may not be created or used to consider the protected
2 consumer's credit worthiness, credit standing, credit capacity,
3 character, general reputation, personal characteristics, or mode of
4 living.

5 (3) 'Representative' means a person who provides to a
6 consumer reporting agency sufficient proof of authority to act on
7 behalf of a protected consumer.

8 (4) 'Security freeze' means:

9 (a) if a consumer reporting agency does not have a file
10 pertaining to a protected consumer, a restriction that:

11 (i) is placed on the protected consumer's record in
12 accordance with this section; and

13 (ii) prohibits the consumer reporting agency from
14 releasing the protected consumer's record except as provided in
15 this section; or

16 (b) if a consumer reporting agency has a file pertaining to
17 the protected consumer, a restriction that:

18 (i) is placed on the protected consumer's credit report
19 in accordance with this section; and

20 (ii) prohibits the consumer reporting agency from
21 releasing the protected consumer's credit report or any information
22 derived from the protected consumer's credit report except as
23 provided in this section.

24 (5) 'Sufficient proof of authority' means documentation that
25 shows a representative has authority to act on behalf of a protected
26 consumer and includes:

27 (a) an order issued by a court of law;

28 (b) a lawfully executed and valid power of attorney; or

29 (c) a written, notarized statement signed by a
30 representative that expressly describes the authority of the
31 representative to act on behalf of a protected consumer.

32 (6) 'Sufficient proof of identification' means information or
33 documentation that identifies a protected consumer or a
34 representative of a protected consumer and includes:

35 (a) a social security number or a copy of a social security
36 card issued by the social security administration;

37 (b) a certified or official copy of a birth certificate issued
38 by the entity authorized to issue the birth certificate; or

39 (c) a copy of a driver's license, an identification card
40 issued by the motor vehicle administration, or any other
41 government issued identification.

42 (B) This section does not apply to the use of a protected
43 consumer's credit report or record by:

1 (1) a person administering a credit file monitoring
2 subscription service to which:
3 (a) the protected consumer has subscribed; or
4 (b) the representative of the protected consumer has
5 subscribed on behalf of the protected consumer;
6 (2) a person providing the protected consumer or the
7 protected consumer's representative with a copy of the protected
8 consumer's credit report on request of the protected consumer or
9 the protected consumer's representative; or
10 (3) an entity exempt from placing a freeze under §
11 100.54(8)
12 (4) an insurance company for the purpose of conducting its
13 ordinary business; or
14 (5) a consumer reporting agency's database or file that consists
15 of information concerning, and used for, one or more of the
16 following, but not for credit granting purposes:
17 (a) criminal record information;
18 (b) fraud prevention or detection;
19 (c) personal loss history information; and
20 (d) employment, tenant, or individual background
21 screening.
22 (C)(1) A consumer reporting agency shall place a security
23 freeze for a protected consumer if:
24 (a) the consumer reporting agency receives a request from
25 the protected consumer's representative for the placement of the
26 security freeze under this section; and
27 (b) the protected consumer's representative:
28 (i) submits the request to the consumer reporting
29 agency at the address or other point of contact and in the manner
30 specified by the consumer reporting agency;
31 (ii) provides to the consumer reporting agency
32 sufficient proof of identification of the protected consumer and the
33 representative;
34 (iii) provides to the consumer reporting agency
35 sufficient proof of authority to act on behalf of the protected
36 consumer; and
37 (iv) pays to the consumer reporting agency a fee as
38 provided in subsection (I) of this section;
39 (2) if a consumer reporting agency does not have a file
40 pertaining to a protected consumer when the consumer reporting
41 agency receives a request under paragraph (1) of this subsection,
42 the consumer reporting agency shall create a record for the
43 protected consumer.

1 (D) Within thirty days after receiving a request that meets the
2 requirements of subsection (C)(1) of this section, a consumer
3 reporting agency shall place a security freeze for the protected
4 consumer.

5 (E) Unless a security freeze for a protected consumer is
6 removed in accordance with subsection (G) or (J) of this section, a
7 consumer reporting agency may not release the protected
8 consumer's credit report, any information derived from the
9 protected consumer's credit report, or any record created for the
10 protected consumer.

11 (F) A security freeze for a protected consumer placed under
12 subsection (D) of this section shall remain in effect until:

13 (1) the protected consumer or the protected consumer's
14 representative requests the consumer reporting agency to remove
15 the security freeze in accordance with subsection (G) of this
16 section; or

17 (2) the security freeze is removed in accordance with
18 subsection (J) of this section.

19 (G) If a protected consumer or a protected consumer's
20 representative wishes to remove a security freeze for the protected
21 consumer, the protected consumer or the protected consumer's
22 representative shall:

23 (1) submit a request for the removal of the security freeze to
24 the consumer reporting agency at the address or other point of
25 contact and in the manner specified by the consumer reporting
26 agency;

27 (2) provide to the consumer reporting agency:

28 (a) in the case of a request by the protected consumer:

29 (i) proof that the sufficient proof of authority for the
30 protected consumer's representative to act on behalf of the
31 protected consumer is no longer valid; and

32 (ii) sufficient proof of identification of the protected
33 consumer; or

34 (b) in the case of a request by the representative of a
35 protected consumer:

36 (i) sufficient proof of identification of the protected
37 consumer and the representative; and

38 (ii) sufficient proof of authority to act on behalf of the
39 protected consumer; and

40 (3) pay to the consumer reporting agency a fee as provided
41 in subsection (I) of this section.

42 (H) Within thirty days after receiving a request that meets the
43 requirements of subsection (G) of this section, the consumer

1 reporting agency shall remove the security freeze for the protected
2 consumer.

3 (I)(1) Except as provided in paragraph (2) of this subsection, a
4 consumer reporting agency may not charge a fee for any service
5 performed under this section.

6 (2) A consumer reporting agency may charge a reasonable
7 fee, not exceeding \$10, for each placement or removal of a security
8 freeze for a protected consumer.

9 (3) Notwithstanding paragraph (2) of this subsection, a
10 consumer reporting agency may not charge any fee under this
11 section if:

12 (a) the protected consumer's representative:

13 (i) has obtained a police report or affidavit of alleged
14 identity fraud against the protected consumer and

15 (ii) provides a copy of the report to the consumer
16 reporting agency; or

17 (b) a request for the placement or removal of a security
18 freeze is for a protected consumer who is under the age of sixteen
19 years at the time of the request; and the consumer reporting agency
20 has a consumer report pertaining to the protected consumer.

21 (J) A consumer reporting agency may remove a security freeze
22 for a protected consumer or delete a record of a protected
23 consumer if the security freeze was placed or the record was
24 created based on a material misrepresentation of fact by the
25 protected consumer or the protected consumer's representative."

26 (K) Notwithstanding any other provision of law, this section shall
27 be enforced solely by the attorney general."

28 SECTION 2. This act takes effect upon January 1, 2014.

29 ----XX----

30

Kunkel, Mark

From: Malaise, Gordon
Sent: Friday, February 01, 2013 11:50 AM
To: Kunkel, Mark; Shea, Elisabeth
Cc: Hanaman, Cathlene; Dodge, Tamara
Subject: RE: Guardianships?

Mark:

I think the best reference would be "guardian of the estate or conservator of an individual." I would not use the derogatory terms "person found incompetent" or "spendthrift," which are the WI counterparts to "incapacitated person" in MD, because it is unnecessary. A person can't have a guardian appointed unless the person is a minor, incompetent, or a spendthrift. Moreover, it would be inaccurate to refer to the conservator of an incompetent person or spendthrift because the conservatee has not been so adjudged as a conservatorship is voluntary. I would limit the guardian reference to a "guardian of the estate" because there are two types of guardians: 1) a guardian of the person, who is concerned with the welfare of the ward; and 2) a guardian of the estate, who is concerned with the money of the ward (although most likely one person would serve as both guardian of the person and guardian of the estate). Credit reports would seem to fall into the money category.

Finally, I would not cross reference WI law, i.e., "under ch. 54 or ch. 880, 2003 stats.," because a guardian could be appointed out-of-state and then the ward is placed in a facility in WI.

Gordon

From: Kunkel, Mark
Sent: Friday, February 01, 2013 10:58 AM
To: Malaise, Gordon; Shea, Elisabeth
Subject: Guardianships?

I'm doing a bill based on a Maryland law that will allow the parent of a child, or guardian of an incapacitated person, to get a credit reporting agency (CRA) to "freeze" access to the child's or incapacitated person's credit information. Under current Wisconsin law, you can get a CRA to freeze access to your own credit info, but we have nothing that allows you to freeze access to your child's info, or that allows a guardian to freeze access.

I'm not sure how to refer to a guardian. Can you suggest something? The Maryland law refers to "an incapacitated person or a protected person for whom a guardian or conservator has been appointed in accordance with Title 13 of the Estates and Trusts Article" of the Maryland statutes. Do we have similar language?

--Mark

Kunkel, Mark

From: Gary, Aaron
Sent: Tuesday, May 07, 2013 10:54 AM
To: Kunkel, Mark
Subject: RE: Driver's licenses, etc.

Not sure how you want to phrase the other govt. ID, but for the first two, I think this will work:

an operator's license issued under ch. 343 or under a comparable law of another state, an identification card issued under s. 343.50 or under a comparable law of another state,

From: Kunkel, Mark
Sent: Tuesday, May 07, 2013 9:35 AM
To: Gary, Aaron
Subject: Driver's licenses, etc.

Aaron, as part of the redraft on the security freeze bill that I'm doing for Rep. Stone, I've been given language on what constitutes "sufficient proof of identification" for a parent to prove that he or she is in fact a parent of an individual. That definition includes "a copy of a driver's license, an identification card issued by the motor vehicle administration, or any other government issued identification." How should I rephrase the foregoing?

Thanks,

--Mark