



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1533/P
MDK:MM:kjf

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0-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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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.~~ INSEAT 1-8

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.

INSEAT 2-1

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.

INSEAT 2-1

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:

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

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

1

INSERT 1-8:

2

no \$

restricting the release of credit information about certain protected individuals

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INSERT 2A:

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

4

INSERT 2-1:

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SECTION 1. 100.26 (1) of the statutes is amended to read:

6

100.26 (1) Any person who violates any provision of this chapter, except s.

7

100.18, 100.20, 100.206 or, 100.51, or 100.545 for which no specific penalty is

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prescribed shall be fined not to exceed \$200, or imprisoned in the county jail not more

9

than 6 months or both.

History: 1975 c. 39; 1979 c. 327; 1981 c. 90; 1981 c. 124 s. 9; 1983 a. 500; 1985 a. 288; 1989 a. 31; 1993 a. 414; 1995 a. 27; 1997 a. 55, 111, 201, 253, 283; 1999 a. 32; 2001 a. 16, 109.

10

SECTION 2. 100.545 of the statutes is created to read:

11

100.545 Security freezes for protected consumers. (1) DEFINITIONS. In

12

this section:

13

(a) "Consumer report" has the meaning given in 15 USC 1681a (d).

14

(b) "Consumer reporting agency" has the meaning given in s. 15 USC 1681a (f).

15

(c) "Protected consumer" means an individual who is one of the following:

16

1. Under the age of 16 years at the time a request for the placement of a security

17

freeze is made under sub. (3) (a).

18

2. An individual for whom a guardian or conservator has been appointed.

19

(d) "Record" means a compilation of information about a protected consumer

20

that satisfies all of the following:

21

1. The compilation identifies the protected consumer.

1 2. The compilation is created by a consumer reporting agency solely for the
2 purpose of complying with this section.

3 3. The compilation is not created or used to consider the protected consumer's
4 credit worthiness, credit standing, credit capacity, character, general reputation,
5 personal characteristics, or mode of living.

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

8 (f) "Security freeze for a protected consumer" means one of the following:

9 1. If a consumer reporting agency does not have a file pertaining to a protected
10 consumer, a restriction placed on the protected consumer's record that prohibits,
11 except as provided in this section, the consumer reporting agency from releasing the
12 protected consumer's record.

13 2. If a consumer reporting agency has a file pertaining to the protected
14 consumer, a restriction placed on the protected consumer's credit report that
15 prohibits, except as provided in this section, the consumer reporting agency from
16 releasing the protected consumer's credit report or any information derived from the
17 protected consumer's credit report.

18 (g) "Sufficient proof of authority" means documentation that shows a
19 representative has authority to act on behalf of a protected consumer, including any
20 of the following:

21 1. An order issued by a court.

22 2. A lawfully executed and valid power of attorney.

23 3. A written, notarized statement signed by a representative that expressly
24 describes the authority of the representative to act on behalf of a protected consumer.

1 (h) "Sufficient proof of identification" means information or documentation
2 that identifies a protected consumer or a representative of a protected consumer,
3 including any of the following:

4 1. A social security number or a copy of a social security card issued by the social
5 security administration.

6 2. A certified or official copy of a birth certificate issued by the entity authorized
7 to issue the birth certificate.

8 3. A copy of an operator's license issued under ch. 343 or under a comparable
9 law of another state, an identification card issued under s. 343.50 or under a
10 comparable law of another state, or any other government issued identification.

11 (2) EXCEPTIONS. This section does not apply to the use of a protected consumer's
12 credit report or record by any of the following:

13 (a) A person administering a credit file monitoring subscription service to
14 which the protected consumer has subscribed or the representative of the protected
15 consumer has subscribed on behalf of the protected consumer.

16 (b) A person providing the protected consumer or the protected consumer's
17 representative with a copy of the protected consumer's credit report on request of the
18 protected consumer or the protected consumer's representative.

19 (c) A person exempted under s. 100.54 (8) from the requirements of s. 100.54.

20 (d) An insurance company for the purpose of conducting its ordinary business.

21 (e) A consumer reporting agency's database or file that consists of information
22 concerning, and used for, one or more of the following, but not for credit granting
23 purposes:

24 1. Criminal record information.

25 2. Fraud prevention or detection.

1 3. Personal loss history information.

2 4. Employment, tenant, or individual background screening.

3 **(3) PLACEMENT OF SECURITY FREEZE.** (a) A consumer reporting agency shall place
4 a security freeze for a protected consumer if the consumer reporting agency receives
5 a request from the protected consumer's representative for the placement of the
6 security freeze and the protected consumer's representative does all of the following:

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

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

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

13 4. Pays to the consumer reporting agency a fee as provided in sub. (5). ✓

14 (b) If a consumer reporting agency does not have a file pertaining to a protected
15 consumer when the consumer reporting agency receives a request under par. (a), ✓/the
16 consumer reporting agency shall create a record for the protected consumer. ✓

17 (c) Within 30 days after receiving a request that meets the requirements of par.
18 (a), ✓ a consumer reporting agency shall place a security freeze for the protected
19 consumer.

20 (d) Unless a security freeze for a protected consumer is removed in accordance
21 with sub. (4) ✓ or (6) ✓, a consumer reporting agency may not release the protected
22 consumer's credit report, any information derived from the protected consumer's
23 credit report, or any record created for the protected consumer. ✓

24 (e) A security freeze for a protected consumer placed under par. (c) remains in
25 effect until one of the following occurs: ✓

1 1. The protected consumer or the protected consumer's representative requests
2 the consumer reporting agency to remove the security freeze in accordance with sub.
3 (4). ✓

4 2. The security freeze is removed in accordance with sub. (6). ✓

5 **(4) REMOVAL OF SECURITY FREEZE.** (a) If a protected consumer or a protected
6 consumer's representative wishes to remove a security freeze for the protected
7 consumer, the protected consumer or the protected consumer's representative shall
8 do all of the following:

9 1. Submit a request for the removal of the security freeze to the consumer
10 reporting agency at the address or other point of contact and in the manner specified
11 by the consumer reporting agency.

12 2. Provide to the consumer reporting agency sufficient proof of identification
13 of the protected consumer and one of the following:

14 a. For a request by the protected consumer, proof that the sufficient proof of
15 authority for the protected consumer's representative to act on behalf of the
16 protected consumer is no longer valid.

17 b. For a request by the representative of the protected consumer, sufficient
18 proof of identification of the representative and sufficient proof of authority to act on
19 behalf of the protected consumer.

20 3. Pay to the consumer reporting agency a fee as provided in sub. (5). ✓

21 (b) Within 30 days after receiving a request that meets the requirements of par.
22 (a), the consumer reporting agency shall remove the security freeze for the protected
23 consumer. ✓

24 **(5) FEES.** (a) Except as provided in par. (b), a consumer reporting agency may
25 not charge a fee for any service performed under this section. ✓

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

3 (c) Notwithstanding par. (b), a consumer reporting agency may not charge any
4 fee under this section if any of the following apply: *applies*

5 1. The protected consumer's representative has obtained a police report or
6 affidavit of alleged identity fraud against the protected consumer and provides a
7 copy of the report to the consumer reporting agency.

8 2. A request for the placement or removal of a security freeze is for a protected
9 consumer who is under the age of 16 years at the time of the request and the
10 consumer reporting agency has a consumer report pertaining to the protected
11 consumer.

12 (6) MATERIAL MISREPRESENTATIONS. A consumer reporting agency may remove
13 a security freeze for a protected consumer or delete a record of a protected consumer
14 if the security freeze was placed or the record was created based on a material
15 misrepresentation of fact by the protected consumer or the protected consumer's
16 representative.

17 (7) ENFORCEMENT. Notwithstanding s. 93.07 (1) and (24), this section shall be
18 enforced solely by the department of justice.

19 **SECTION 3. Effective date.**

20 (1) This act takes effect on January 14, 2014, or *or* the day after publication,
21 whichever is later.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1533/P2dn

MDK: *EF*

Date

Rep. Stone:

Please note the following about this version of the draft, which is based on the proposal that you provided. After you have considered the following, I can prepare a version of this draft that can be used as a substitute amendment to any other bill that is introduced on this topic.

1. I made changes to the proposal to conform to our drafting conventions. In addition, I created a new section (proposed s. 100.545), rather than a new subsection in s. 100.54, to ensure that the new definition of "security freeze," does not affect the provisions of current law dealing with security freezes. Also note that I rephrased the reference to guardians and conservators in proposed s. 100.545 (1) (c) 2. See also the changes to proposed s. 100.545 (1) (h) 3., regarding driver's licenses and other forms of identification. In addition, note that I rephrased the exception set forth in proposed s. 100.545 (2) (c).

X 2. Proposed s. 100.545 (1) (d) 3. defines "record," in part, as a compilation that is not created or used to consider a protected consumer's creditworthiness, etc. Is that okay, or is the intent to prohibit using a record for a such a purpose? If you want to prohibit such use, I would revise the draft to create a new subsection in s. 100.545 for that prohibition, rather than including it in the definition of "record."

3. Proposed s. 100.545 (1) (f) 1. and 2. and (3) (b) refer to whether a consumer reporting agency (CRA) has a "file" pertaining to a protected consumer. However, proposed s. 100.545 (5) (c) 2. refers to whether a CRA has a "consumer report" pertaining to a protected consumer. Should proposed s. 100.545 (5) (c) 2. be revised to refer to a file? If so, the definition of "consumer report" is no longer necessary.

4. Proposed s. 100.545 (2) (e) 3. refers to "personal loss history information," and proposed s. 100.545 (2) (e) 4. refers to "individual background screening." Can you clarify what those terms mean?

5. DATCP enforces s. 100.54, which deals with security freezes under current law. However, as requested in the proposal, DOJ, rather than DATCP, has exclusive authority to enforce the draft's requirements regarding security freezes for protected consumers. Is that okay? Also note that, instead of "notwithstanding" any other provision of law, s. 100.545 (7) "notwithstands" s. 93.01 (1) and (24), which generally authorize DATCP to enforce ch. 100.

①

6. Regarding penalties, note that I exempted the draft from the criminal penalties that apply to certain violations of chapter 100. See the amendment of s. 100.26 (1). Is that okay? However, note that under s. 939.61 (1), a person who violates the draft is subject to a civil forfeiture of not more than \$200. Is that okay, or do want a different penalty to apply?

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1533/P2dn
MDK:kjf:jm

May 8, 2013

Rep. Stone:

Please note the following about this version of the draft, which is based on the proposal that you provided. After you have considered the following, I can prepare a version of this draft that can be used as a substitute amendment to any other bill that is introduced on this topic.

1. I made changes to the proposal to conform to our drafting conventions. In addition, I created a new section (proposed s. 100.545), rather than a new subsection in s. 100.54, to ensure that the new definition of "security freeze," does not affect the provisions of current law dealing with security freezes. Also note that I rephrased the reference to guardians and conservators in proposed s. 100.545 (1) (c) 2. See also the changes to proposed s. 100.545 (1) (h) 3., regarding driver's licenses and other forms of identification. In addition, note that I rephrased the exception set forth in proposed s. 100.545 (2) (c).
2. Proposed s. 100.545 (1) (d) 3. defines "record," in part, as a compilation that is not created or used to consider a protected consumer's creditworthiness, etc. Is that okay, or is the intent to prohibit using a record for a such a purpose? If you want to prohibit such use, I would revise the draft to create a new subsection in s. 100.545 for that prohibition, rather than including it in the definition of "record."
3. Proposed s. 100.545 (1) (f) 1. and 2. and (3) (b) refer to whether a consumer reporting agency (CRA) has a "file" pertaining to a protected consumer. However, proposed s. 100.545 (5) (c) 2. refers to whether a CRA has a "consumer report" pertaining to a protected consumer. Should proposed s. 100.545 (5) (c) 2. be revised to refer to a file? If so, the definition of "consumer report" is no longer necessary.
4. Proposed s. 100.545 (2) (e) 3. refers to "personal loss history information," and proposed s. 100.545 (2) (e) 4. refers to "individual background screening." Can you clarify what those terms mean?
5. DATCP enforces s. 100.54, which deals with security freezes under current law. However, as requested in the proposal, DOJ, rather than DATCP, has exclusive authority to enforce the draft's requirements regarding security freezes for protected consumers. Is that okay? Also note that, instead of "notwithstanding" any other provision of law, s. 100.545 (7) "notwithstands" s. 93.07 (1) and (24), which generally authorize DATCP to enforce ch. 100.

6. Regarding penalties, note that I exempted the draft from the criminal penalties that apply to certain violations of chapter 100. See the amendment of s. 100.26 (1). Is that okay? However, note that under s. 939.61 (1), a person who violates the draft is subject to a civil forfeiture of not more than \$200. Is that okay, or do you want a different penalty to apply?

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

Kunkel, Mark

From: Phillips, Justin
Sent: Thursday, May 09, 2013 2:54 PM
To: Kunkel, Mark
Subject: RE: Drafter's note issues

Can we do something like For a Class B forfeiture of \$1,000 939.52 (2) area?

--

Justin Phillips

Office of Representative Jeff Stone
82nd Assembly District

(608) 266-8590

From: Kunkel, Mark
Sent: Thursday, May 09, 2013 2:34 PM
To: Phillips, Justin
Subject: RE: Drafter's note issues

Sections 943.201 and 943.203 are probably the main "identify theft" statutes. Violating either statute is a class H felony, which results in a fine not to exceed \$10,000, imprisonment not to exceed 6 years, or both.

Also note that s. 943.41 deals with using someone else's "financial transaction card." The penalty depends on the violation and amount of money stolen, but ranges from a class A misdemeanor (a fine not to exceed \$10,000, imprisonment not to exceed 9 months, or both) to a class I felony (a fine not to exceed \$10,000, imprisonment not to exceed 3 years and 6 months, or both).

In addition, s. 943.70 deals with hacking into someone's computer and getting data. The penalty depends on whether the data stolen is used for a crime, and varies from a class A misdemeanor to a class F felony (a fine not to exceed \$25,000, imprisonment not to exceed 12 years and 6 months, or both).

From: Phillips, Justin
Sent: Thursday, May 09, 2013 2:10 PM
To: Kunkel, Mark
Subject: RE: Drafter's note issues

Mark- It is believed that the penalties are too low.
what is the penalty of identity theft? Or is there a comparable penalty somewhere in statute already?

--

Justin Phillips

Office of Representative Jeff Stone
82nd Assembly District

(608) 266-8590

From: Kunkel, Mark
Sent: Thursday, May 09, 2013 1:12 PM
To: Phillips, Justin
Subject: RE: Drafter's note issues

Yes.

From: Phillips, Justin
Sent: Thursday, May 09, 2013 1:12 PM
To: Kunkel, Mark
Subject: RE: Drafter's note issues

I think Thiesfeldt is going to want this added, can you do that?

--

Justin Phillips

Office of Representative Jeff Stone
82nd Assembly District

(608) 266-8590

From: Kunkel, Mark
Sent: Thursday, May 09, 2013 12:50 PM
To: Phillips, Justin
Subject: RE: Drafter's note issues

That is similar, but more detailed, than your bill (LRB-1533/P2).

Under LRB-1533/P2, if a consumer reporting agency (CRA) does not have a file pertaining to a protected customer, the CRA must create a record. See page 5, lines 1 to 3. As a result, the CRA will have to check its files to see if it has a file for a protected customer. However, LRB-1533/P2 doesn't specify how the CRA must check its files, and so does not specify that the CRA must check both the name and social security. They might check both, but the bill doesn't say they have to check both.

--Mark

From: Phillips, Justin
Sent: Thursday, May 09, 2013 12:20 PM
To: Kunkel, Mark
Subject: RE: Drafter's note issues

Mark-

This was in the Thiesfeldt/Hebl Cosponsorship memo: This bill also provides that prior to a credit freeze being placed the credit agency must also do a search of the minor to assure no records have already been created under their name or social security number. Its on Page 5 line 1 of LRB 1532

--

Justin Phillips

Office of Representative Jeff Stone

82nd Assembly District

(608) 266-8590

From: Kunkel, Mark

Sent: Thursday, May 09, 2013 10:43 AM

To: Phillips, Justin

Subject: Drafter's note issues

Justin:

You left a voicemail asking whether the issues raised in my drafter's note to your request (LRB-1533/P2) are applicable to the other request (LRB-1532/4). Here are my thoughts on the items in the drafter's note:

Item 1: Your draft includes a new definition of "security freeze" that applies only to protected consumers. The other draft relies on the existing definition under current law. This doesn't create any substantive differences by itself. Instead, it just reflects a different choice on how to incorporate the new language for protected consumers into current law. As for references to guardians and conservators, your draft refers to them in proposed s. 100.545 (1) (c) 2. (defining "protected consumer"), while the other draft refers to them in proposed s. 100.54 (1) (cv) 2. (defining "representative") and elsewhere. The other draft refers to them in more detail, but I think both drafts generally accomplish the same purpose. However, note that the other draft also refers to an agent under a durable power of attorney, in addition to a guardian or conservator. Regarding forms of identification, your draft gives examples of what constitutes sufficient identification, while the other draft refers to proper identification without giving examples. As for exemptions under s. 100.54 (8), those exemptions apply to both drafts. In your draft, they apply because I created s. 100.545 (2) (c), and in the other draft they apply because s. 100.54 (8) is amended accordingly.

Item 2: Your draft creates a definition for "record." The other draft doesn't define the term, but does require the creation of a record under certain circumstances. Your definition appears to attempt to create a restriction on the use of record (i.e., that it can't be used for credit granting purposes, etc.). If that's the intent, I would move that restriction out of the definition and into its own substantive provision. The other draft creates a restriction on use, but states it a bit differently. See s. 100.54 (2m) (d) 2., which allows use of information received to create a record only for the purpose a security freeze.

Item 3: In this item, I point out a possible inconsistency in your draft regarding references to files versus reports. The larger issue is that the 2 drafts appear to accomplish the same thing, but in different ways. Under your draft, a consumer reporting agency (CRA) must determine whether it has a "file" on a protected consumer. If there is no file, the CRA must create a record. In the other draft, a CRA must determine whether it has a consumer report on a protected consumer, and, if not, must create a record. I may be wrong, but it appears that both drafts accomplish the same thing, but use different language to do so. You may want CRA input on this issue.

Item 4: In this item, I asked for clarification on "personal loss history information" and "individual background screening." The other draft does not use those terms.

Item 5: In this item, I point out that your draft is enforced exclusively by DOJ. The other draft, like the current law on security freezes, is enforced by DATCP. My questions about DOJ enforcement do not apply to the other draft.

Item 6: In this item, I ask what penalties you want to apply. As drafted, the only penalty that would apply is a civil forfeiture of not more than \$200, which is default penalty under current law that applies when a statute does not otherwise specify a penalty. See s. 939.61 (1). In addition, I exempted your draft from the criminal penalties that would apply under s. 100.26 (1) (fine of no more than \$200, no more than 6 months in county jail, or both). Under the other draft, those criminal penalties do apply, and the default civil forfeiture does not apply. Also note that the other draft allows a person or CRA injured by a violation to sue for damages. This results because the other draft creates its provisions in s. 100.54, and 100.54 (8) allows for such lawsuits for violations of s. 100.54. Your draft does not allow such lawsuits.

There are other differences between the 2 drafts, and the above is limited to the items in my drafter's note.

--Mark

Kunkel, Mark

From: Phillips, Justin
Sent: Friday, May 10, 2013 12:05 PM
To: Kunkel, Mark
Subject: FW: The proposed Wisconsin legislation re credit freezes for minors
Attachments: HB493.pdf; SB00060F.pdf; 148_20130426(1).docx; sb0574.a(1).pdf

Attached are the bills from Florida, Oregon, SC as well as Texas. I hope these help with definitions I am just in the process of reviewing these now as well

--

Justin Phillips

Office of Representative Jeff Stone
82nd Assembly District

(608) 266-8590

From: Amanda J. Soelle [<mailto:ajs@dewittross.com>] **On Behalf Of** Anthony H. Driessen
Sent: Friday, May 10, 2013 11:53 AM
To: Phillips, Justin
Cc: Ramon Looby; Eric Ellman; Jodi E. Jensen
Subject: The proposed Wisconsin legislation re credit freezes for minors

Justin,

Per your thoughtful e-mail of yesterday, attached are the bills pending in Florida, Oregon and South Carolina. I have also enclosed the legislation in Texas that is close to being signed into law, for your reference.

For these laws regarding credit freezes for children to work effectively, the drafting is critically important in order to avoid unintended consequences. If you have any questions about the specific language or phrasing, please contact either of our national experts on this issue:

- Ramon Looby – (202)408-7404 or rlooby@cdiaonline.org
- Eric Ellman – (202) 408-7407 or eellman@cdiaonline.org

We very much appreciate the opportunity to work with you to accomplish your objective in a manner that will be effective and workable.

Best regard,
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

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 501.0051, Florida Statutes, is created to read:

501.0051 Protected consumer security freeze.-

(1) As used in this section, the term:

(a) "Consumer reporting agency" has the same meaning as provided in 15 U.S.C. s. 1681a(f).

(b) "Consumer report" has the same meaning as provided in 15 U.S.C. s. 1681a(d).

(c) "Protected consumer" means a person younger than 16 years of age at the time a security freeze request is made or a person represented by a guardian or other advocate pursuant to chapter 39, chapter 393, chapter 744, or chapter 914.

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

1. Identifies a protected consumer;

2. Is created by a consumer reporting agency exclusively for the purpose of complying with this section; and

3. May not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or eligibility for other financial services.

(e) "Representative" means the custodial parent or legal guardian of a protected consumer, including a guardian appointed pursuant to s. 914.17.

(f) "Security freeze" means:

1. A notice that is placed on the protected consumer's

57 | consumer report that prohibits a consumer reporting agency from
 58 | releasing the consumer report, credit score, or any information
 59 | contained within the consumer report to a third party without
 60 | the express authorization of the representative; or

61 | 2. A notice that is placed on the protected consumer's
 62 | record that prohibits the consumer reporting agency from
 63 | releasing the protected consumer's record except as provided in
 64 | this section, if a consumer reporting agency does not have a
 65 | file pertaining to the protected consumer.

66 | (g) "Sufficient proof of authority" means documentation
 67 | that shows that a representative has authority to act on behalf
 68 | of a protected consumer. Sufficient proof of authority includes,
 69 | but is not limited to, a court order, valid power of attorney,
 70 | or a written notarized statement signed by a representative that
 71 | expressly describes the authority of the representative to act
 72 | on behalf of the protected consumer.

73 | (h) "Sufficient proof of identification" means
 74 | documentation that identifies a protected consumer or a
 75 | representative of a protected consumer. Sufficient proof of
 76 | identification includes, but is not limited to, a copy of a
 77 | social security card, a certified or official copy of a birth
 78 | certificate, a copy of a valid driver license, or a government-
 79 | issued photo identification.

80 | (2) A representative may place a security freeze by:
 81 | (a) Submitting a request to a consumer reporting agency in
 82 | the manner prescribed by that agency;

83 | (b) Providing the agency with sufficient proof of
 84 | authority and sufficient proof of identification; and

85 (c) Paying the agency a fee as authorized under this
 86 section.

87 (3) If a consumer reporting agency does not have a
 88 consumer report pertaining to a protected consumer when the
 89 consumer reporting agency receives a request for a security
 90 freeze under subsection (2), the consumer reporting agency shall
 91 create a record for the protected consumer and place a security
 92 freeze on the record.

93 (4) A consumer reporting agency shall place a security
 94 freeze within 30 days after confirming the authenticity of a
 95 security freeze request made in accordance with this section.

96 (5) The consumer reporting agency shall send a written
 97 confirmation of the security freeze to the representative within
 98 10 business days after instituting the security freeze and shall
 99 provide the representative with instructions for removing the
 100 security freeze and a unique personal identifier to be used by
 101 the representative when providing authorization for removal of a
 102 security freeze.

103 (6) A consumer reporting agency may not state or imply to
 104 any person that a security freeze reflects a negative credit
 105 score, negative credit history, or a negative credit rating.

106 (7) A consumer reporting agency shall remove a security
 107 freeze only in the following instances:

108 (a) Upon request of a representative pursuant to paragraph
 109 (8) (a).

110 (b) Upon request of a protected consumer pursuant to
 111 paragraph (8) (b).

112 (c) If the security freeze was instituted due to a

113 material misrepresentation of fact by a representative. If a
 114 consumer reporting agency intends to remove a security freeze
 115 pursuant to this paragraph, the consumer reporting agency shall
 116 notify the representative in writing before removing the
 117 security freeze.

118 (8) A security freeze placed in accordance with this
 119 section shall remain in place until a representative or
 120 protected consumer requests that it be removed. A consumer
 121 reporting agency shall remove a security freeze within 30 days
 122 after receiving a request for removal from a protected consumer
 123 or representative.

124 (a) A representative submitting a request for removal must
 125 provide the following:

126 1. Sufficient proof of identification and sufficient proof
 127 of authority as determined by the consumer reporting agency.

128 2. The unique personal identifier provided by the consumer
 129 reporting agency pursuant to subsection (5).

130 3. Payment of a fee as authorized by this section.

131 (b) A protected consumer submitting a request for removal
 132 must provide the following:

133 1. Sufficient proof of identification as determined by the
 134 consumer reporting agency.

135 2. Documentation that the sufficient proof of authority
 136 for the protected consumer's representative to act on behalf of
 137 the protected consumer is no longer valid.

138 (9) This section does not apply to use of a consumer
 139 record or report by the following persons or for the following
 140 reasons:

141 (a) A state agency acting within its lawful investigative
 142 or regulatory authority.

143 (b) A state or local law enforcement agency investigating
 144 a crime or conducting a criminal background check.

145 (c) Any person administering a credit file monitoring
 146 subscription service to which the protected consumer has
 147 subscribed.

148 (d) Any person for the purpose of providing the protected
 149 consumer's consumer report upon the representative's request.

150 (e) Any person with a court order lawfully entered.

151 (f) Any insurance company for use in setting or adjusting
 152 a rate, adjusting a claim, or underwriting for insurance
 153 purposes.

154 (g) A consumer reporting agency's database or file which
 155 consists entirely of information concerning, and is used
 156 exclusively for, one or more of the following:

- 157 1. Criminal record information.
- 158 2. Personal loss history information.
- 159 3. Fraud prevention or detection.
- 160 4. Tenant screening.
- 161 5. Employment screening.
- 162 6. Personal insurance policy information.
- 163 7. Noncredit information used for insurance purposes.

164 (h) A check services company that issues authorizations
 165 for the purpose of approving or processing negotiable
 166 instruments, electronic funds transfers, or similar methods of
 167 payment.

168 (i) A deposit account information service company that

169 issues reports regarding account closures due to fraud,
 170 substantial overdrafts, automatic teller machine abuse, or
 171 similar negative information regarding a protected consumer to
 172 an inquiring financial institution, as defined in s. 655.005 or
 173 in federal law, for use only in reviewing a representative's
 174 request for a deposit account for the protected consumer at the
 175 inquiring financial institution.

176 (j) A consumer reporting agency that acts only as a
 177 reseller of credit information by assembling and merging
 178 information contained in the database of another consumer
 179 reporting agency or multiple consumer reporting agencies and
 180 does not maintain a permanent database of credit information
 181 from which new consumer reports are produced. However, a
 182 consumer reporting agency shall honor any security freeze placed
 183 or removed by another consumer reporting agency.

184 (k) A fraud prevention services company issuing reports to
 185 prevent or investigate fraud.

186 (10) (a) A consumer reporting agency may charge a
 187 reasonable fee, not to exceed \$10, to a representative who
 188 elects to place or remove a security freeze.

189 (b) A consumer reporting agency may charge a reasonable
 190 fee, not to exceed \$10, if the representative fails to retain
 191 the original personal identifier provided by the consumer
 192 reporting agency and the agency must reissue the personal
 193 identifier or provide a new personal identifier to the
 194 representative.

195 (c) A consumer reporting agency may not charge any fee
 196 under this section to a representative of a protected consumer

197 who is a victim of identity theft if the representative submits,
 198 at the time the security freeze is requested, a copy of a valid
 199 investigative report or incident report or complaint with a law
 200 enforcement agency about the unlawful use of the protected
 201 consumer's identifying information by another person.

202 (11) If a security freeze is in effect, a consumer
 203 reporting agency may not change any of the following official
 204 information without sending a written confirmation of the change
 205 to the representative within 30 days after the change is posted:

- 206 (a) The protected consumer's name.
- 207 (b) The protected consumer's address.
- 208 (c) The protected consumer's date of birth.
- 209 (d) The protected consumer's social security number.

210
 211 Written confirmation is not required for technical corrections
 212 of a protected consumer's official information, including name
 213 and street abbreviations, complete spellings, or transposition
 214 of numbers or letters. In the case of an address change, the
 215 written confirmation must be sent to both the new address and
 216 the former address.

217 (12) If a consumer reporting agency violates a security
 218 freeze placed in accordance with this section by releasing
 219 information subject to a security freeze without proper
 220 authorization, the consumer reporting agency shall, within 5
 221 business days after discovering or being notified of the release
 222 of information, notify the representative of the protected
 223 consumer in writing. The notice shall state the specific
 224 information released, and provide the name, address, and other

225 | contact information of the recipient of the information.

226 | (13) A consumer reporting agency that willfully fails to
 227 | comply with any requirement imposed under this section with
 228 | respect to any representative or protected consumer is subject
 229 | to an administrative fine in the amount of \$500 issued pursuant
 230 | to the administrative procedures established in chapter 120 by
 231 | the Department of Agriculture and Consumer Services.

232 | (14) A person who is aggrieved by a violation of this
 233 | section may bring a civil action as follows:

234 | (a) A person who obtains a record or report under false
 235 | pretenses, or who knowingly obtains a record or report without a
 236 | permissible purpose, is liable to the representative and
 237 | protected consumer for actual damages sustained by the protected
 238 | consumer or \$1,000, whichever is greater.

239 | (b) A person who obtains a record or report from a
 240 | consumer reporting agency under false pretenses, or who
 241 | knowingly obtains a record or report without a permissible
 242 | purpose, is liable to the consumer reporting agency for actual
 243 | damages sustained by the consumer reporting agency or \$1,000,
 244 | whichever is greater.

245 | (15) A written disclosure by a consumer reporting agency,
 246 | pursuant to 15 U.S.C. s. 1681g, to a representative and
 247 | protected consumer residing in this state shall include a
 248 | written summary of all rights that the representative and
 249 | protected consumer have under this section, and, in the case of
 250 | a consumer reporting agency which compiles and maintains records
 251 | on a nationwide basis, a toll-free telephone number that the
 252 | representative can use to communicate with the consumer

CS/CS/HB 493

2013

253 reporting agency. The information provided in paragraph (b) of
 254 the written summary of rights must be in at least 12-point
 255 boldface type. The written summary of rights required under this
 256 section is sufficient if it is substantially in the following
 257 form:

258 (a) If you are the custodial parent or legal guardian of a
 259 minor younger than 16 years of age or a guardian or advocate of
 260 an incapacitated, disabled, or protected person under chapter
 261 39, chapter 393, chapter 744, or chapter 914, Florida Statutes,
 262 you have a right to place a security freeze on the consumer
 263 report of the person you are legally authorized to care for. If
 264 no consumer report exists, you have a right to request a record
 265 to be created and a security freeze to be placed on the record.
 266 A record with a security freeze is intended to prevent the
 267 opening of credit accounts until the security freeze is removed.

268 (b) YOU SHOULD BE AWARE THAT USING A SECURITY FREEZE TO
 269 CONTROL ACCESS TO THE PERSONAL AND FINANCIAL INFORMATION IN THE
 270 CONSUMER RECORD OR REPORT MAY DELAY, INTERFERE WITH, OR PROHIBIT
 271 THE TIMELY APPROVAL OF ANY SUBSEQUENT REQUEST OR APPLICATION
 272 REGARDING A NEW LOAN, CREDIT, MORTGAGE, INSURANCE, GOVERNMENT
 273 SERVICES OR PAYMENTS, RENTAL HOUSING, EMPLOYMENT, INVESTMENT,
 274 LICENSE, CELLULAR PHONE, UTILITIES, DIGITAL SIGNATURE, INTERNET
 275 CREDIT CARD TRANSACTION, OR OTHER SERVICES, INCLUDING AN
 276 EXTENSION OF CREDIT AT POINT OF SALE.

277 (c) To remove the security freeze on the protected
 278 consumer's record or report, you must contact the consumer
 279 reporting agency and provide all of the following:

280 1. The personal identification required by the consumer

281 reporting agency.

282 2. Sufficient proof of authority over the protected
 283 consumer.

284 3. Payment of a fee authorized by this section.

285 (d) A consumer reporting agency must, within 30 days after
 286 receiving the above information, authorize the removal of the
 287 security freeze.

288 (e) A security freeze does not apply to a person or
 289 entity, or its affiliates, or collection agencies acting on
 290 behalf of the person or entity, with which the protected
 291 consumer has an existing account, that requests information in
 292 the protected consumer's consumer report for the purposes of
 293 reviewing or collecting the account. Reviewing the account
 294 includes activities related to account maintenance, monitoring,
 295 credit line increases, and account upgrades and enhancements.

296 (f) You have the right to bring a civil action as
 297 authorized by s. 501.0051, Florida Statutes, which governs the
 298 security of protected consumer information.

299 Section 2. This act shall take effect September 1, 2013.

1 AMENDED
2 April 25, 2013

3

4

S. 148

5

6 Introduced by Senators Shealy, Bryant, Gregory and Alexander

7

8 S. Printed 4/25/13--S.

[SEC 4/26/13 2:30 PM]

9 Read the first time January 8, 2013.

10 _____

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A BILL

TO AMEND CHAPTER 20, TITLE 37 OF THE 1976 CODE, RELATING TO CONSUMER IDENTITY THEFT PROTECTION, BY ADDING SECTION 37-20-161, 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.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 20, Title 37 of the 1976 Code is amended by adding:

- "Section 37-20-161. (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;

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

3 (c) may not be created or used to consider the protected
4 consumer's credit worthiness, credit standing, credit capacity,
5 character, general reputation, personal characteristics, or mode of
6 living for any purpose listed in Section 37-20-110(3).

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

10 (4) 'Security freeze' means:

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

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

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

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

20 (i) is placed on the protected consumer's consumer
21 report in accordance with this section; and

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

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

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

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

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

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

37 (a) a social security number or a copy of a social security
38 card issued by the social security administration;

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

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

1 (B) This section does not apply to the use of a protected
2 consumer's consumer report or record by a person specified in
3 Section 37-120-60(K) or (L).

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

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

9 (b) the protected consumer's representative:

10 (i) submits the request to the consumer reporting
11 agency at the address or other point of contact and in the manner
12 specified by the consumer reporting agency;

13 (ii) provides to the consumer reporting agency
14 sufficient proof of identification of the protected consumer and the
15 representative; and

16 (iii) provides to the consumer reporting agency
17 sufficient proof of authority to act on behalf of the protected
18 consumer;

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

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

28 (E) Unless a security freeze for a protected consumer is
29 removed in accordance with subsection (G) or (I) of this section, a
30 consumer reporting agency may not release the protected
31 consumer's consumer report, any information derived from the
32 protected consumer's consumer report, or any record created for
33 the protected consumer.

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

36 (1) the protected consumer or the protected consumer's
37 representative requests the consumer reporting agency to remove
38 the security freeze in accordance with subsection (G) of this
39 section; or

40 (2) the security freeze is removed in accordance with
41 subsection (I) of this section.

42 (G) If a protected consumer or a protected consumer's
43 representative wishes to remove a security freeze for the protected

1 consumer, the protected consumer or the protected consumer's
2 representative shall:

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

7 (2) provide to the consumer reporting agency:

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

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

12 (ii) sufficient proof of identification of the protected
13 consumer; or

14 (b) in the case of a request by the representative of a
15 protected consumer:

16 (i) sufficient proof of identification of the protected
17 consumer and the representative; and

18 (ii) sufficient proof of authority to act on behalf of the
19 protected consumer.

20 (H) Within fifteen days after receiving a request that meets the
21 requirements of subsection (G) of this section, the consumer
22 reporting agency shall remove the security freeze for the protected
23 consumer.

24 (I) A consumer reporting agency may remove a security freeze
25 for a protected consumer or delete a record of a protected
26 consumer if the security freeze was placed or the record was
27 created based on a material misrepresentation of fact by the
28 protected consumer or the protected consumer's representative.

29 (J) A consumer reporting agency may charge a fee to place a
30 security freeze for a protected consumer only if the protected
31 consumer does not already have a consumer credit file and the
32 agency must create one in order to place the security freeze.”

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34 SECTION 2. This act takes effect January 1, 2014.

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AN ACT

relating to authorizing the placement of a security freeze on the consumer file or other record created or maintained by a consumer reporting agency regarding a person under 16 years of age.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 20, Business & Commerce Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. SECURITY FREEZE FOR CHILD

Sec. 20.21. DEFINITIONS. In this subchapter:

(1) "Protected consumer" means an individual who resides in this state and is younger than 16 years of age at the time a request for the placement of a security freeze is made.

(2) "Record," with respect to a protected consumer, means a compilation of information identifying a protected consumer created by a consumer reporting agency solely to comply with this subchapter.

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

(4) "Security freeze," with respect to a protected consumer, means:

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

1 (i) is placed on the protected consumer's
2 record in accordance with this subchapter; and

3 (ii) prohibits a consumer reporting agency
4 from releasing a consumer report relating to the extension of
5 credit involving the consumer's record without the express
6 authorization of the consumer's representative or the consumer, as
7 applicable; or

8 (B) if a consumer reporting agency has a consumer
9 file pertaining to the protected consumer, a restriction that:

10 (i) is placed on the protected consumer's
11 consumer report in accordance with this subchapter; and

12 (ii) except as otherwise provided by this
13 subchapter, prohibits a consumer reporting agency from releasing
14 the protected consumer's consumer report relating to the extension
15 of credit involving that consumer file, or any information derived
16 from the protected consumer's consumer report.

17 Sec. 20.22. APPLICABILITY; CONFLICT OF LAW. (a) This
18 subchapter does not apply to the use of a protected consumer's
19 consumer report or record by:

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

22 (A) the protected consumer has subscribed; or

23 (B) the representative of the protected consumer
24 has subscribed on behalf of the protected consumer;

25 (2) a person providing the protected consumer or the
26 protected consumer's representative with a copy of the protected
27 consumer's consumer report on request of the protected consumer or

1 the protected consumer's representative;

2 (3) a consumer reporting agency with respect to a
3 database or file that consists entirely of information concerning,
4 and is used solely for, one or more of the following:

5 (A) criminal history record information;

6 (B) personal loss history information;

7 (C) fraud prevention or detection;

8 (D) tenant screening; or

9 (E) employment screening; or

10 (4) an entity described by Section 20.038(11), (12),
11 or (13).

12 (b) To the extent of a conflict between a provision of this
13 subchapter relating to a protected consumer and another provision
14 of this chapter, this subchapter controls.

15 Sec. 20.23. PROOF OF AUTHORITY AND IDENTIFICATION.

16 (a) Documentation that shows a person has authority to act on
17 behalf of a protected consumer is considered sufficient proof of
18 authority for purposes of this subchapter, including:

19 (1) an order issued by a court; or

20 (2) a written, notarized statement signed by a
21 representative that expressly describes the authority of the
22 representative to act on behalf of a protected consumer.

23 (b) Information or documentation that identifies a
24 protected consumer or a representative of a protected consumer is
25 considered sufficient proof of identity for purposes of this
26 subchapter, including:

27 (1) a social security number or a copy of the social

1 security card issued by the United States Social Security
2 Administration;

3 (2) a certified or official copy of a birth
4 certificate issued by the entity authorized to issue the birth
5 certificate;

6 (3) a copy of a driver's license or identification card
7 issued by the Department of Public Safety; or

8 (4) any other government-issued identification.

9 Sec. 20.24. USE OF RECORD TO CONSIDER CREDITWORTHINESS OR
10 FOR OTHER PURPOSES PROHIBITED. A protected consumer's record may
11 not be created or used to consider the protected consumer's
12 creditworthiness, credit standing, credit capacity, character,
13 general reputation, personal characteristics, or mode of living for
14 any purpose described by Section 20.01(4).

15 Sec. 20.25. REQUEST TO PLACE A SECURITY FREEZE; CREATION OF
16 RECORD. (a) Except as provided by Subsection (b), a consumer
17 reporting agency shall place a security freeze on a protected
18 consumer's consumer file if:

19 (1) the consumer reporting agency receives a request
20 from the protected consumer's representative for the placement of
21 the security freeze as provided by this section; and

22 (2) the protected consumer's representative:

23 (A) submits the request to the consumer reporting
24 agency at the address or other point of contact of and in the manner
25 specified by the consumer reporting agency;

26 (B) provides to the consumer reporting agency
27 sufficient proof of identification of the protected consumer and

1 the representative;

2 (C) provides to the consumer reporting agency
3 sufficient proof of authority to act on behalf of the protected
4 consumer; and

5 (D) pays to the consumer reporting agency a fee
6 as provided by Section 20.29.

7 (b) If a consumer reporting agency does not have a consumer
8 file pertaining to a protected consumer when the consumer reporting
9 agency receives a request under Subsection (a) and if the
10 requirements of Subsection (a) are met, the consumer reporting
11 agency shall create a record for the protected consumer and place a
12 security freeze on the protected consumer's record.

13 (c) The consumer reporting agency shall place the security
14 freeze on the protected consumer's consumer file or record, as
15 applicable, not later than the 30th day after receiving a request
16 that meets the requirements of Subsection (a).

17 Sec. 20.26. RELEASE OF CONSUMER REPORT PROHIBITED. Unless
18 a security freeze on a protected consumer's consumer file or record
19 is removed under Section 20.28 or 20.30, a consumer reporting
20 agency may not release any consumer report relating to the
21 protected consumer, any information derived from the protected
22 consumer's consumer report, or any record created for the protected
23 consumer.

24 Sec. 20.27. PERIOD OF SECURITY FREEZE. A security freeze on
25 a protected consumer's consumer file or record remains in effect
26 until:

27 (1) the protected consumer or the protected consumer's

1 representative requests that the consumer reporting agency remove
2 the security freeze in accordance with Section 20.28; or

3 (2) a consumer reporting agency removes the security
4 freeze under Section 20.30.

5 Sec. 20.28. REMOVAL OF SECURITY FREEZE. (a) A protected
6 consumer or a protected consumer's representative may remove a
7 security freeze on a protected consumer's consumer file or record
8 if the protected consumer or representative:

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

13 (2) provides to the consumer reporting agency:

14 (A) in the case of a request by the protected
15 consumer:

16 (i) sufficient proof of identification of
17 the protected consumer; and

18 (ii) proof that the sufficient proof of
19 authority for the protected consumer's representative to act on
20 behalf of the protected consumer is no longer valid; or

21 (B) in the case of a request by the
22 representative of a protected consumer:

23 (i) sufficient proof of identification of
24 the protected consumer and the representative; and

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

27 (3) pays to the consumer reporting agency a fee as

1 provided by Section 20.29.

2 (b) The consumer reporting agency shall remove the security
3 freeze on the protected consumer's consumer file or record not
4 later than the 30th day after the date the agency receives a request
5 that meets the requirements of Subsection (a).

6 Sec. 20.29. FEES. (a) A consumer reporting agency may not
7 charge a fee for any service performed under this subchapter other
8 than a fee authorized by this section.

9 (b) Except as provided by Subsection (c), a consumer
10 reporting agency may charge a reasonable fee in an amount not to
11 exceed \$10 for each placement or removal of a security freeze on the
12 protected consumer's consumer file or record.

13 (c) A consumer reporting agency may not charge a fee for the
14 placement of a security freeze under this subchapter if:

15 (1) the protected consumer's representative submits to
16 the consumer reporting agency a copy of a valid police report,
17 investigative report, or complaint involving the commission of an
18 offense under Section 32.51, Penal Code; or

19 (2) at the time the protected consumer's
20 representative makes the request for a security freeze:

21 (A) the protected consumer is under the age of
22 16; and

23 (B) the consumer reporting agency has created a
24 consumer report pertaining to the protected consumer.

25 Sec. 20.30. EFFECT OF MATERIAL MISREPRESENTATION OF FACT.
26 A consumer reporting agency may remove a security freeze on a
27 protected consumer's consumer file or record, or delete a record of

1 a protected consumer, if the security freeze was placed or the
2 record was created based on a material misrepresentation of fact by
3 the protected consumer or the protected consumer's representative.

4 Sec. 20.31. REMEDY FOR VIOLATION. Notwithstanding
5 Subchapter D or any other law, the exclusive remedy for a violation
6 of this subchapter is a suit filed by the attorney general under
7 Section 20.11.

8 SECTION 2. Sections 20.01, 20.02, 20.021, and 20.03,
9 Business & Commerce Code, are designated as Subchapter A, Chapter
10 20, Business & Commerce Code, and a heading is added to that
11 subchapter to read as follows:

12 SUBCHAPTER A. GENERAL REQUIREMENTS

13 SECTION 3. Sections 20.031, 20.032, 20.033, 20.034, 20.035,
14 20.036, 20.037, 20.038, 20.0385, and 20.039, Business & Commerce
15 Code, are designated as Subchapter B, Chapter 20, Business &
16 Commerce Code, and a heading is added to that subchapter to read as
17 follows:

18 SUBCHAPTER B. SECURITY ALERT AND SECURITY FREEZE

19 SECTION 4. Sections 20.04, 20.05, 20.06, and 20.07,
20 Business & Commerce Code, are designated as Subchapter C, Chapter
21 20, Business & Commerce Code, and a heading is added to that
22 subchapter to read as follows:

23 SUBCHAPTER C. RESTRICTIONS ON AND AUTHORITY OF CONSUMERS AND

24 CONSUMER REPORTING AGENCIES

25 SECTION 5. Sections 20.08, 20.09, 20.10, 20.11, 20.12, and
26 20.13, Business & Commerce Code, are designated as Subchapter D,
27 Chapter 20, Business & Commerce Code, and a heading is added to that

1 subchapter to read as follows:

2 SUBCHAPTER D. ENFORCEMENT

3 SECTION 6. This Act takes effect January 1, 2014.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 60 passed the Senate on
March 13, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 60 passed the House on
May 4, 2013, by the following vote: Yeas 138, Nays 0, two present
not voting.

Chief Clerk of the House

Approved:

Date

Governor

A-Engrossed
Senate Bill 574

Ordered by the Senate April 22
Including Senate Amendments dated April 22

Sponsored by Senator PROZANSKI

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Permits consumer to request that consumer reporting agency place, temporarily lift or remove security freeze on protected consumer's consumer report if consumer provides sufficient proof of consumer's authority to act on protected consumer's behalf. **Requires consumer reporting agency to create protective record for protected consumer if protected consumer does not have consumer report.**

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

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Relating to security freezes on protected consumers' consumer reports; creating new provisions; amending ORS 646A.602, 646A.606, 646A.608, 646A.610, 646A.612 and 646A.614; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 646A.602 is amended to read:

646A.602. As used in ORS 646A.600 to 646A.628:

(1)(a) "Breach of security" means **an** unauthorized acquisition of computerized data that materially compromises the security, confidentiality or integrity of personal information [*maintained by the*] **that a person maintains.**

(b) "Breach of security" does not include [*good-faith*] **an inadvertent** acquisition of personal information by a person or [*that*] **the** person's employee or agent [*for a legitimate purpose of that person*] if the personal information is not used in violation of applicable law or in a manner that harms or poses an actual threat to the security, confidentiality or integrity of the personal information.

(2) "Consumer" means an individual [*who is also a*] resident of this state.

(3) "Consumer report" means a consumer report as described in section 603(d) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)), as that Act existed on October 1, 2007, that [*is compiled and maintained by*] a consumer reporting agency **compiles and maintains.**

(4) "Consumer reporting agency" means a consumer reporting agency as described in section 603(p) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(p)) as that Act existed on October 1, 2007.

(5) "Debt" means any obligation or alleged obligation arising out of a consumer transaction, as defined in ORS 646.639.

(6) "Encryption" means the use of an algorithmic process to transform data into a form in which

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 the data is rendered unreadable or unusable without the use of a confidential process or key.

2 (7) "Extension of credit" means *[the]* a right to defer *[payment of]* **paying** debt or a **right** to
3 incur debt and defer *[its payment]* **paying the debt, that is** offered or granted primarily for personal,
4 family or household purposes.

5 (8) "Identity theft" has the meaning set forth in ORS 165.800.

6 (9) "Identity theft declaration" means a completed and signed statement *[documenting]* **that**
7 **documents** alleged identity theft, using the form available from the Federal Trade Commission, or
8 another substantially similar form.

9 (10) "Person" means any individual, private or public corporation, partnership, cooperative, as-
10 sociation, estate, limited liability company, organization or other entity, whether or not organized
11 to operate at a profit, or a public body as defined in ORS 174.109.

12 (11) "Personal information":

13 (a) Means a consumer's first name or first initial and last name in combination with any one
14 or more of the following data elements, when the data elements are not rendered unusable through
15 encryption, redaction or other methods, or when the data elements are encrypted and the encryption
16 key has also been acquired:

17 (A) Social Security number;

18 (B) Driver license number or state identification card number issued by the Department of
19 Transportation;

20 (C) Passport number or other United States issued identification number; or

21 (D) Financial account number, credit or debit card number, in combination with any required
22 security code, access code or password that would permit access to a consumer's financial account.

23 (b) Means any of the data elements or any combination of the data elements described in para-
24 graph (a) of this subsection when not combined with the consumer's first name or first initial and
25 last name and when the data elements are not rendered unusable through encryption, redaction or
26 other methods, if the information obtained would be sufficient to permit a person to commit identity
27 theft against the consumer whose information was compromised.

28 (c) Does not include information, other than a Social Security number, in a federal, state or local
29 government record that is lawfully made available to the public.

30 (12) "**Proper identification**" means **written information or documentation that a con-**
31 **sumer or representative can present to another person as evidence of the consumer's or**
32 **representative's identity, examples of which include:**

33 (a) **A valid Social Security number or a copy of a valid Social Security card;**

34 (b) **A certified or otherwise official copy of a birth certificate that a governmental body**
35 **issued; and**

36 (c) **A copy of a driver license or other government-issued identification.**

37 (13) "**Protected consumer**" means **an individual who is:**

38 (a) **Not older than 16 years old at the time a representative requests a security freeze**
39 **on the individual's behalf; or**

40 (b) **Incapacitated or for whom a court or other authority has appointed a guardian or**
41 **conservator.**

42 (14) "**Protective record**" means **information that a consumer reporting agency compiles**
43 **to identify a protected consumer for whom the consumer reporting agency has not prepared**
44 **a consumer report.**

45 [(12)] (15) "**Redacted**" means altered or truncated so that no more than the last four digits of

1 a Social Security number, driver license number, state identification card number, account number
2 or credit or debit card number is accessible as part of the data.

3 **(16) "Representative" means a consumer who provides a consumer reporting agency with**
4 **sufficient proof of the consumer's authority to act on a protected consumer's behalf.**

5 ~~[(13)]~~ **(17) "Security freeze" means a notice placed in a consumer report**, *at the request of a*
6 *consumer and subject to certain exemptions, that prohibits the consumer reporting agency from releas-*
7 *ing the consumer report for the extension of credit unless the consumer has temporarily lifted or re-*
8 *moved the freeze* **at a consumer's request or a representative's request or in a protective**
9 **record at a representative's request that, subject to certain exemptions, prohibits a con-**
10 **sumer reporting agency from releasing information in the consumer report or the protective**
11 **record for an extension of credit, unless the consumer temporarily lifts the security freeze**
12 **on the consumer's consumer report or a protected consumer or representative removes the**
13 **security freeze on or deletes the protective record.**

14 **SECTION 2.** ORS 646A.606 is amended to read:

15 646A.606. (1) A consumer may elect to place a security freeze on the consumer's **consumer**
16 **report or, if the consumer is a representative, on a protected consumer's** consumer report or
17 **protective record** by sending a written request to a consumer reporting agency at an address
18 *[designated by]* the agency **designates** to receive such requests, or a secure electronic request at a
19 website *[designated by]* the agency **designates** to receive such requests if *[such method is made*
20 *available by]* the consumer reporting agency, at the agency's discretion, **makes a secure electronic**
21 **method available.**

22 (2) If the consumer **or protected consumer** is the victim of identity theft or has reported a
23 **theft of personal information** to a law enforcement agency *[the theft of personal information]*, the
24 consumer **or representative** may include a copy of the police report, incident report or identity
25 theft declaration.

26 (3)(a) The consumer **or representative** must provide proper identification and any fee author-
27 ized by ORS 646A.610.

28 (b)(A) **In addition to the information and fee described in paragraph (a) of this sub-**
29 **section, a representative who seeks to place a security freeze on a protected consumer's**
30 **consumer report or protective record shall provide sufficient proof of the representative's**
31 **authority to act on the protected consumer's behalf.**

32 (B) **For purposes of subparagraph (A) of this paragraph, sufficient proof of authority**
33 **consists of:**

34 (i) **A court order that identifies or describes the relationship between the representative**
35 **and the protected consumer;**

36 (ii) **A valid and lawfully executed power of attorney that permits the representative to**
37 **act on the protected consumer's behalf; or**

38 (iii) **A written affidavit that the representative signs and has notarized in which the**
39 **representative expressly describes the relationship between the representative and the pro-**
40 **protected consumer and the representative's authority to act on the protected consumer's be-**
41 **half.**

42 (4)(a) Except as provided in ORS 646A.614, if a security freeze is in place **for a consumer re-**
43 **port**, information from *[a]* the consumer report may not be released without prior express authori-
44 zation from the consumer.

45 (b) **Information from a protective record may not be released until the protected con-**

1 **sumer for whom the consumer reporting agency created the protective record, or a repre-**
 2 **sentative of the protected consumer, removes the security freeze.**

3 (5) This section does not prevent a consumer reporting agency from advising a third party that
 4 a security freeze is in effect with respect to the consumer report **or protective record.**

5 **SECTION 3.** ORS 646A.608 is amended to read:

6 646A.608. (1)(a) A consumer reporting agency shall place a security freeze on a consumer report
 7 *[no]* **not** later than five business days after receiving from *[the]* a consumer:

8 *[(a)]* **(A)** The request described in ORS 646A.606 (1);

9 *[(b)]* **(B)** Proper identification; and

10 *[(c)]* **(C)** A fee, if applicable.

11 **(b) If a consumer report does not exist for a protected consumer on behalf of whom a**
 12 **representative seeks to place a security freeze, a consumer reporting agency shall create a**
 13 **protective record after receiving from the representative the request described in ORS**
 14 **646A.606 (1), proper identification for both the representative and the protected consumer**
 15 **and sufficient proof of authority, as described in ORS 646A.606 (3)(b). After creating a pro-**
 16 **protective record for a protected consumer under this paragraph, the consumer reporting**
 17 **agency shall place the security freeze that the representative requested on the protected**
 18 **consumer's protective record.**

19 **(c) The protective record that the consumer reporting agency creates under paragraph**
 20 **(b) of this subsection does not need to contain any information other than the protected**
 21 **consumer's personal information, if other information for the protected consumer is not**
 22 **available. Except as provided in ORS 646A.614, a consumer reporting agency may not use or**
 23 **release to another person the information in a protective record for the purpose of assessing**
 24 **a protected consumer's eligibility or capacity for an extension of credit, as a basis for eval-**
 25 **uating a protected consumer's character, reputation or personal characteristics or for other**
 26 **purposes that are not related to protecting the protected consumer from identity theft.**

27 **(2)(a) The consumer reporting agency shall send a written confirmation of *[the]* a security freeze**
 28 **on a consumer's consumer report to the consumer~~[, to]~~ at the last known address for the con-**
 29 **sumer *[as contained]* shown in the consumer report *[maintained by]* that the consumer reporting**
 30 **agency maintains, within 10 business days after placing the security freeze and, with the confir-**
 31 **mation, shall provide the consumer with a unique personal identification number or password or**
 32 **similar device *[to be used by]* the consumer *[when providing authorization for release of]* must use**
 33 **to authorize the consumer reporting agency to release the consumer's consumer report for a**
 34 **specific period of time or *[for permanently removing]* to permanently remove the security freeze.**
 35 **The consumer reporting agency shall *[also]* include with *[such]* the written confirmation information**
 36 ***[regarding the process of lifting a]* that describes how to remove a security freeze~~,~~ and *[the***
 37 ***process of temporarily lifting a]* how to temporarily lift a security freeze *[for allowing]* on a con-**
 38 **sumer report, other than a consumer report for a protected consumer, in order to allow ac-**
 39 **cess to information from the consumer's *[credit]* consumer report for a period of time while the**
 40 **security freeze is in place.**

41 **(b) This subsection does not require a consumer reporting agency to provide a consumer**
 42 **or representative with a personal identification number or password for the consumer or**
 43 **representative to use to authorize the consumer reporting agency to release information**
 44 **from a protective record.**

45 **(3)(a) If a consumer wishes to allow the consumer's consumer report to be accessed for a spe-**

1 cific period of time while a **security** freeze is in effect, the consumer shall contact the consumer
2 reporting agency using a point of contact [*designated by*] the consumer reporting agency
3 **designates**, request that the **security** freeze be temporarily lifted and provide the following:

4 [(a)] (A) Proper identification;

5 [(b)] (B) The unique personal identification number or password or similar device [*provided by*]
6 the consumer reporting agency [*pursuant to*] **provided under** subsection (2) of this section;

7 [(c)] (C) [*The information regarding the time period for which the consumer report shall*] **An in-**
8 **dicat**ion of the period of time during which the consumer report must be available to users
9 of the [*credit*] **consumer** report; and

10 [(d)] (D) A fee, if applicable.

11 (b) **A protective record is not subject to a temporary lift of a security freeze.**

12 (c) **Except as provided in ORS 646A.612 (2)(a), a consumer report for a protected con-**
13 **sumer is not subject to a temporary lift of a security freeze.**

14 (4) A consumer reporting agency that receives a request from the consumer to temporarily lift
15 a **security** freeze on a [*credit*] **consumer** report, **other than a consumer report for a protected**
16 **consumer**, [*pursuant to*] **under** subsection (3) of this section shall comply with the request [*no*] **not**
17 later than three business days after receiving from the consumer:

18 (a) Proper identification;

19 (b) The unique personal identification number or password or similar device [*provided by*] the
20 consumer reporting agency [*pursuant to*] **provided under** subsection (2) of this section;

21 (c) [*The information regarding the time period for which the consumer report shall*] **An indicat**
22 **of the period of time during which the consumer report must** be available to users of the
23 **consumer report**; and

24 (d) A fee, if applicable.

25 (5)(a) A security freeze [*shall*] **for a consumer report must** remain in place until the consumer
26 requests, using a point of contact [*designated by*] the consumer reporting agency **designates**, that
27 the security freeze be removed. A consumer reporting agency shall remove a security freeze within
28 three business days [*of*] **after** receiving a request for removal from the consumer, who provides:

29 [(a)] (A) Proper identification;

30 [(b)] (B) The unique personal identification number or password or similar device [*provided by*]
31 the consumer reporting agency [*pursuant to*] **provided under** subsection (2) of this section; and

32 [(c)] (C) A fee, if applicable.

33 (b) **A security freeze for a protective record must remain in place until the protected**
34 **consumer or a representative requests, using a point of contact the consumer reporting**
35 **agency designates, that the security freeze be removed or that the protective record be de-**
36 **leted. The consumer reporting agency does not have an affirmative duty to notify the pro-**
37 **ected consumer or the representative that a security freeze is in place or to remove the**
38 **security freeze or delete the protective record once the protected consumer is no longer a**
39 **protected consumer. A protected consumer or a representative has the affirmative duty to**
40 **request that the consumer reporting agency remove the security freeze or delete the pro-**
41 **ective record. A consumer reporting agency shall remove a security freeze or delete a pro-**
42 **ective record within 30 business days after receiving a request for removal or deletion from**
43 **the protected consumer or a representative, who provides:**

44 (A) Proper identification;

45 (B) Sufficient proof of authority, as described in ORS 646A.606 (3)(b), if the representative

1 seeks to remove the security freeze or delete the protective record;

2 (C) Proof that the representative's authority to act on the protected consumer's behalf
3 is no longer valid or applicable, if the protected consumer seeks to remove the security
4 freeze or delete the protective record; and

5 (D) A fee, if applicable.

6 [(6) No later than December 31, 2008, the Director of the Department of Consumer and Business
7 Services shall report to the chairs of the legislative committees that considered ORS 646A.600 to
8 646A.628 concerning the minimum amount of time necessary, using current technology, to place, tem-
9 porarily lift or remove a freeze on a consumer report, and to verify a consumer's identity. If the chair
10 of any legislative committee is vacant at the time of making the report, the report shall also be made
11 to the President of the Senate and the Speaker of the House of Representatives.]

12 **SECTION 4.** ORS 646A.610 is amended to read:

13 646A.610. (1) A consumer reporting agency may not charge a fee to a consumer **or a protected**
14 **consumer** who is the victim of identity theft or **to a consumer** who has reported **or a protected**
15 **consumer for whom a representative has reported** to a law enforcement agency the theft of
16 personal information, provided the consumer **or the representative** has submitted to the consumer
17 reporting agency a copy of a valid police report, incident report or identity theft declaration.

18 (2)(a) A consumer reporting agency may charge a reasonable fee of [no] **not** more than \$10 to
19 a consumer, other than a consumer described in subsection (1) of this section, for each **placement**
20 **of a security** freeze, temporary lift of the **security** freeze, removal of the **security** freeze or re-
21 placing a lost personal identification number or password previously provided to the consumer[, re-
22 garding access to a consumer credit report].

23 (b)(A) **Except as provided in subsection (1) of this section and in subparagraph (B) of this**
24 **paragraph, a consumer reporting agency may charge a reasonable fee of not more than \$10**
25 **to place or remove a security freeze for a protected consumer's consumer report or protec-**
26 **tive record or to create or delete a protective record for a protected consumer.**

27 (B) A consumer reporting agency may not charge a fee to place or remove a security
28 freeze on an existing consumer report or protective record for a protected consumer who is
29 under 16 years of age at the time a representative requests the consumer reporting agency
30 to place or remove the security freeze.

31 **SECTION 5.** ORS 646A.612 is amended to read:

32 646A.612. (1)(a) A consumer reporting agency shall temporarily lift or remove a security freeze
33 placed on a [consumer's credit report only in the following cases:] **consumer report only if a con-**
34 **sumer requests that the consumer reporting agency lift or remove the security freeze for**
35 **the consumer report in accordance with ORS 646A.608.**

36 (b) A consumer reporting agency shall remove a security freeze from a protected
37 consumer's consumer report or protective record or delete a protective record only if the
38 protected consumer or a representative requests that the consumer reporting agency remove
39 the security freeze from the consumer report or protective record or delete the protective
40 record in accordance with ORS 646A.608.

41 (2)(a) A consumer reporting agency may temporarily lift or remove a security freeze
42 placed on a consumer report if the security freeze was placed because of a consumer's, a
43 protected consumer's or a representative's material misrepresentation of fact.

44 (b) A consumer reporting agency may remove a security freeze from or delete a protec-
45 tive record if the consumer reporting agency placed the security freeze or created the pro-

1 tective record as a result of the protected consumer's or the representative's material
2 misrepresentation of fact.

3 (c) If a consumer reporting agency intends to remove a security freeze or delete a pro-
4 tective record under this subsection, the consumer reporting agency shall notify the con-
5 sumer, protected consumer or representative, as appropriate, in writing at least five
6 business days before removing the security freeze or deleting the protective record.

7 [(1) Upon the consumer's request, pursuant to ORS 646A.608 (3) or (5).]

8 [(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the
9 consumer, the consumer reporting agency may remove the security freeze. If a consumer reporting
10 agency intends to remove a freeze upon a consumer's credit report pursuant to this subsection, the
11 consumer reporting agency shall notify the consumer in writing at least five business days prior to
12 removing the freeze placed on the consumer report.]

13 **SECTION 6.** ORS 646A.614 is amended to read:

14 646A.614. (1) The provisions of ORS 646A.606 to 646A.610 do not apply to the use of a consumer
15 report or a protective record by or for any of the following:

16 [(1)] (a) A person, or the person's subsidiary, affiliate, agent or assignee with which the con-
17 sumer or protected consumer has or, prior to assignment, had an account, contract or debtor-
18 creditor relationship for the purposes of reviewing the account or collecting the financial obligation
19 owing for the account, contract or debtor-creditor relationship. For purposes of this subsection,
20 "reviewing the account" includes activities related to account maintenance, monitoring, credit line
21 increases and account upgrades and enhancements[;].

22 [(2)] (b) Any person acting pursuant to a judgment, court order, warrant or subpoena[;].

23 [(3)] (c) A federal, state or local governmental entity, [including] a law enforcement agency or
24 court, or [their agents or assignees, acting to investigate] an agent or assignee of the federal, state
25 or local governmental entity, law enforcement agency or court, for the purpose of investi-
26 gating fraud or [acting to investigate or collect] investigating or collecting delinquent taxes, [or]
27 unpaid judgments or court orders or acting otherwise to fulfill [their] statutory or regulatory
28 duties, [provided such responsibilities] if the activities or statutory or regulatory duties are
29 consistent with a permissible purpose under section 604 of the federal Fair Credit Reporting Act (15
30 U.S.C. 1681b) as that Act existed on October 1, 2007[;].

31 [(4)] (d) The use of credit information for the purposes of prescreening [as provided by] in ac-
32 cordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) as that Act existed
33 on October 1, 2007[;].

34 [(5)] (e) Any person for the sole purpose of providing a credit file monitoring subscription ser-
35 vice, or similar service to which the consumer or protected consumer has subscribed or to which
36 a representative has subscribed on behalf of the protected consumer[;].

37 [(6)] (f) A consumer reporting agency for the sole purpose of providing a consumer, a protected
38 consumer or a representative with a copy of the consumer's or protected consumer's consumer
39 report upon the consumer's, protected consumer's or representative's request[;].

40 [(7)] (g) Any person or entity for the [use] purpose of setting or adjusting rates, for handling
41 claims [handling] or underwriting for insurance purposes, to the extent permitted by law[;].

42 [(8)] (h) A subsidiary, affiliate, agent, assignee or prospective assignee of a person to whom ac-
43 cess has been granted under ORS 646A.608 (3) for purposes of facilitating the extension of credit
44 or other permissible use[;].

45 [(9)] (i) A child support agency acting pursuant to Title IV-D of the Social Security Act (42

1 U.S.C. 651 et seq.) as that Act existed on October 1, 2007[; *and*].

2 [(10)] (j) A person for the sole purpose of screening an applicant for a residential dwelling unit
3 as described in ORS 90.295 (1).

4 (2) The provisions of ORS 646A.606 to 646A.610 do not apply to a protective record used:

5 (a) By an entity listed in ORS 646A.618 (2); or

6 (b) For purposes other than an extension of credit, including:

7 (A) Compiling a criminal record;

8 (B) Detecting or preventing fraud;

9 (C) Compiling a personal loss history; or

10 (D) Screening an applicant for employment, tenancy or other background checking pur-
11 poses.

12 SECTION 7. (1) The amendments to ORS 646A.602, 646A.606, 646A.608, 646A.610, 646A.612
13 and 646A.614 by sections 1 to 6 of this 2013 Act become operative 91 days after the effective
14 date of this 2013 Act.

15 (2) The Director of the Department of Consumer and Business Services may take any
16 action before the operative date specified in subsection (1) of this section that is necessary
17 to enable the director to exercise, on and after the operative date specified in subsection (1)
18 of this section, all of the duties, functions and powers conferred on the director by the
19 amendments to ORS 646A.602, 646A.606, 646A.608, 646A.610, 646A.612 and 646A.614 by sections
20 1 to 6 of this 2013 Act.

21 SECTION 8. This 2013 Act being necessary for the immediate preservation of the public
22 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
23 on its passage.

24

Kunkel, Mark

From: Kunkel, Mark
Sent: Friday, May 10, 2013 1:50 PM
To: Kunkel, Mark
Subject: FW: The proposed Wisconsin legislation re credit freezes for minors
Attachments: HB493.pdf; SB00060F.pdf; 148_20130426(1).docx; sb0574.a(1).pdf

Per my phone call with Justin today:

Regarding item 2 of my d-note: create separate prohibition (move from definition) ✓

Item 3: fix the inconsistency (sub "file" for "report") ✓

Item 4: see Oregon and Florida proposals, as Justin thinks they expand on meaning of terms ✓

Item 5: allow both DATCP and DOJ to enforce – find comparable example in ch. 100 where DATCP has primary authority, but DOJ may also enforce ✓

Item 6: see Justin's earlier email on forfeiture amount ✓

✓ Finally, although we didn't discuss, see Justin's earlier email on requiring both a SSN and name check of a CRA's files

From: Phillips, Justin
Sent: Friday, May 10, 2013 12:05 PM
To: Kunkel, Mark
Subject: FW: The proposed Wisconsin legislation re credit freezes for minors

Attached are the bills from Florida, Oregon, SC as well as Texas. I hope these help with definitions
I am just in the process of reviewing these now as well

--

Justin Phillips

Office of Representative Jeff Stone
82nd Assembly District

(608) 266-8590

From: Amanda J. Soelle [<mailto:ajs@dewittross.com>] **On Behalf Of** Anthony H. Driessen
Sent: Friday, May 10, 2013 11:53 AM
To: Phillips, Justin
Cc: Ramon Looby; Eric Ellman; Jodi E. Jensen
Subject: The proposed Wisconsin legislation re credit freezes for minors

Justin,

Per your thoughtful e-mail of yesterday, attached are the bills pending in Florida, Oregon and South Carolina. I have also enclosed the legislation in Texas that is close to being signed into law, for your reference.

For these laws regarding credit freezes for children to work effectively, the drafting is critically important in order to avoid unintended consequences. If you have any questions about the specific language or phrasing, please contact either of our national experts on this issue:

- Ramon Looby - (202)408-7404 or rlooby@cdiaonline.org
- Eric Ellman - (202) 408-7407 or eellman@cdiaonline.org

We very much appreciate the opportunity to work with you to accomplish your objective in a manner that will be effective and workable.

Best regard,
Tony

Anthony H. Driessen
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