



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1533/P2
MDK:kjf:an

O-NOTE

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~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

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1 AN ACT *to amend* 100.26 (1); and *to create* 100.545 of the statutes; **relating to:**
2 restricting the release of credit information about certain protected
3 individuals. *and providing a penalty*

Analysis by the Legislative Reference Bureau

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

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

4 **SECTION 1.** 100.26 (1) of the statutes is amended to read:
5 100.26 (1) Any person who violates any provision of this chapter, except s.
6 100.18, 100.20, 100.206 or, 100.51, or 100.545, for which no specific penalty is
7 prescribed shall be fined not to exceed \$200, or imprisoned in the county jail not more
8 than 6 months or both.

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

1 **100.545 Security freezes for protected consumers. (1) DEFINITIONS.** In
2 this section:

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

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

5 (c) “Protected consumer” means an individual who is one of the following:

6 1. Under the age of 16 years at the time a request for the placement of a security
7 freeze is made under sub. (3) (a).

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

9 (d) “Record” means a compilation of information about a protected consumer
10 that satisfies all of the following:

11 1. The compilation identifies the protected consumer.

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

14 3. The compilation is not created or used to consider the protected consumer’s
15 creditworthiness, credit standing, credit capacity, character, general reputation,
16 personal characteristics, or mode of living.

17 (e) “Representative” means a person who provides to a consumer reporting
18 agency sufficient proof of authority to act on behalf of a protected consumer.

19 (f) “Security freeze for a protected consumer” means one of the following:

20 1. If a consumer reporting agency does not have a file pertaining to a protected
21 consumer, a restriction placed on the protected consumer’s record that prohibits,
22 except as provided in this section, the consumer reporting agency from releasing the
23 protected consumer’s record.

24 2. If a consumer reporting agency has a file pertaining to the protected
25 consumer, a restriction placed on the protected consumer’s credit report that

1 prohibits, except as provided in this section, the consumer reporting agency from
2 releasing the protected consumer's credit report or any information derived from the
3 protected consumer's credit report.

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

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

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

- 14 1. A social security number or a copy of a social security card issued by the social
15 security administration.
- 16 2. A certified or official copy of a birth certificate issued by the entity authorized
17 to issue the birth certificate.
- 18 3. A copy of an operator's license issued under ch. 343 or under a comparable
19 law of another state, an identification card issued under s. 343.50 or under a
20 comparable law of another state, or any other government issued identification.

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

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

1 (b) A person providing the protected consumer or the protected consumer's
2 representative with a copy of the protected consumer's credit report on request of the
3 protected consumer or the protected consumer's representative.

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

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

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

9 1. Criminal record information.

10 2. Fraud prevention or detection.

11 3. Personal loss history information.

12 4. Employment, tenant, or ~~credit~~ ^{other} background screening.

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

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

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

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

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

1 (b) If a consumer reporting agency does not have a file pertaining to a protected
2 consumer when the consumer reporting agency receives a request under par. (a), the
3 consumer reporting agency shall create a record for the protected consumer.

IN SEAT
5-3

4 (c) Within 30 days after receiving a request that meets the requirements of par.
5 (a), a consumer reporting agency shall place a security freeze for the protected
6 consumer.

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

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

13 1. The protected consumer or the protected consumer's representative requests
14 the consumer reporting agency to remove the security freeze in accordance with sub.
15 (4).

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

17 (4) REMOVAL OF SECURITY FREEZE. (a) If a protected consumer or a protected
18 consumer's representative wishes to remove a security freeze for the protected
19 consumer, the protected consumer or the protected consumer's representative shall
20 do all of the following:

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

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

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

4 b. For a request by the representative of the protected consumer, sufficient
5 proof of identification of the representative and sufficient proof of authority to act on
6 behalf of the protected consumer.

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

8 (b) Within 30 days after receiving a request that meets the requirements of par.
9 (a), the consumer reporting agency shall remove the security freeze for the protected
10 consumer.

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

13 (b) A consumer reporting agency may charge a reasonable fee, not exceeding
14 \$10, for each placement or removal of a security freeze for a protected consumer.

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

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

20 2. A request for the placement or removal of a security freeze is for a protected
21 consumer who is under the age of 16 years at the time of the request and the
22 consumer reporting agency has a ~~consumer report~~ *consumer report* pertaining to the protected
23 consumer.

24 (6) MATERIAL MISREPRESENTATIONS. A consumer reporting agency may remove
25 a security freeze for a protected consumer or delete a record of a protected consumer

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file

PENALTY;

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

INSEAT 7-4

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

6 **SECTION 3. Effective date.**

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

9 (END)

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INSERT A:

Current law generally allows an individual to prohibit a consumer reporting agency (CRA) 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 CRA, provides proper identification, and pays any applicable fee, the CRA must include a "security freeze" on the individual's credit report. A CRA 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 CRAs to which the requirements do not apply and exceptions allowing a CRA 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. In addition, a CRA must remove a security freeze upon an individual's request, but may charge a fee to do so.

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This bill provides for additional security freezes by allowing representatives to obtain security freezes on behalf of protected consumers. The bill defines a "protected consumer" (s) either: 1) an individual who is under 16 years old; or 2) an individual for whom a guardian or conservator has been appointed. The bill defines a "representative" as a person who provides "sufficient proof of authority" to act on behalf of a protected consumer, which is defined to include: 1) a court order; 2) a power of attorney; or 3) a notarized statement describing the authority to act on behalf of a protected consumer. Under the bill, a representative may request a security freeze for a protected consumer by providing a CRA with the sufficient proof of authority described above, as well as "sufficient proof of identification" of both the representative and protected consumer. The bill defines "sufficient proof of identification" to include: 1) a social security number (SSN) or copy of a SSN card; 2) a certified or official copy of a birth certificate; 3) a copy of a motor vehicle operator's license or identification card. or

If a CRA receives a representative's request for a security freeze on behalf of a protected consumer, and the CRA already has a file on the protected consumer, the CRA must place a security freeze that prohibits the CRA from releasing the protected consumer's credit report. If the CRA does not have a file on the protected consumer, the CRA must place a security freeze by creating a record identifying the protected consumer. The bill prohibits using the record for credit considerations. The bill requires a CRA to verify that it has no file by checking names and SSNs in its existing files. The bill requires a CRA to place a security freeze within 30 days after receiving a request that complies with the bill, regardless of whether the CRA already has a file on the protected consumer. Upon placement of a security freeze, the CRA may not release the protected consumer's credit report, any information derived from the credit report, or any record created under the bill, unless the security freeze is removed as discussed below.

The bill also does the following:

1. Creates procedures for representatives and protected consumers to have CRAs remove security freezes and allows CRAs to remove security freezes based on material misrepresentation of fact by representatives or protected consumers.

2. Allows CRAs to charge a reasonable fee not exceeding \$10 for placing or removing security freezes, but prohibits fees in cases involving identity theft or protected consumers under 16 years old who already have files at CRAs.

2. Creates exceptions from the bill's requirements, including the exceptions that apply to security freeze restrictions under current law, as well as exceptions for information used for criminal records, fraud prevention or detection, personal loss history information, or certain background screening purposes.

3. Allows the Department of Agriculture, Trade and Consumer Protection and the Department of Justice to bring actions to enforce the bill's requirements.

4. Subjects a person who violates the bill to a civil forfeiture of not more than \$1,000 per violation.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

INSERT 5-3:

Upon receiving the request, the consumer reporting agency shall verify that no file pertains to the protected consumer by checking for existing files relating to the protected consumer's name and social security number and for existing files relating only to the protected consumer's social security number. A record created under this paragraph may not be used to consider the protected consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

INSERT 7-4:

(a) A person who violates this section may be required to forfeit not more than \$1,000 for each violation.

(b) The department of agriculture, trade and consumer protection or the department of justice, after consulting with the department, may bring an action for temporary or permanent injunctive or other relief for any violation of this section or an action for the penalties authorized in par.

(a).

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of agriculture, trade and consumer protection
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1533/1dn
MDK...
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Date

Rep. Stone:

Please note the following about this version:

1. This version is identical to the previous version except for the following:

lps: fix indent
| ← a. The restriction on use of a record has been moved from definitions to proposed s. 100.545 (3) (b). In addition, proposed s. 100.545 (3) (b) includes a requirement for a consumer reporting agency to check social security numbers and names in its existing files, which is similar to a requirement in LRB-1532/4.

| ← b. Proposed s. 100.545 (2) (e) 4. refers to "other" background screening, which is similar to the Oregon legislation you provided.

| ← c. Proposed s. 100.545 (5) (c) 1. is revised to allow a representative to submit a copy of a police report or affidavit to a consumer reporting agency. The previous version referred only to submitting a copy of a police report.

| ← d. Proposed s. 100.545 (5) (c) 2. refers to a file, instead of a consumer report.

| ← e. Proposed s. 100.545 (7) is revised to allow both DATCP and DOJ to bring enforcement actions and to create a civil forfeiture of not more than \$1,000 per violation.

2. In the drafter's note to the previous version, I asked for clarification on the meaning of "personal loss history information," which is used in proposed s. 100.545 (2) (e) 3. However, legislation in other states uses the term without providing a definition. Therefore, I assume it must have a commonly understood meaning in the regulated community and that no definition is necessary. According to an on-line glossary of insurance terms that I found (maintained by the Texas Department of Insurance), "loss history" refers to the number of insurance claims previously filed by a policyholder. I assume "personal loss history information" refers to the same thing. If that is not your intent, please let me know so I can revise the bill.

Mark D. Kunkel
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E-mail: mark.kunkel@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1533/1dn
MDK:kjf:jm

May 17, 2013

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Barman, Mike

From: Kunkel, Mark
Sent: Monday, June 03, 2013 2:24 PM
To: Barman, Mike
Subject: Jacketing LRB-1533

Per Justin in Rep. Stone's office, can you jacket the above bill for Rep. Thiesfeldt?

Thanks,

--Mark

send
to

for
Assembly