

Report From Agency

DATCP Docket No. 06-R-05
Rules Clearinghouse No. 06-130

ORDER OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION ADOPTING RULES

The Wisconsin department of agriculture, trade and consumer protection adopts the following rule to create ch. ATCP 112, relating to credit report security freezes.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

This rule implements s. 100.54, Stats. (created by 2005 Wis. Act 140), related to credit report security freezes. This rule clarifies the information that consumer reporting agencies may request in order to verify the identity of persons requesting credit report security freezes. Consumer reporting agencies must adopt written procedures to comply with s. 100.54, Stats., and this rule.

Statutory Authority

Statutory Authority: ss. 93.07(1), 100.54(12) and 100.20(2), Stats.
Statutes Interpreted: ss. 100.54 and 100.20(1), Wis. Stats.

The Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”) has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. Section 100.54(12), Stats., specifically requires DATCP to adopt rules related to identification required of consumers requesting credit report security freezes. Under s. 100.20(2), Stats., DATCP may adopt rules (general orders) to prohibit unfair business practices and require fair practices.

Background

Section 100.54, Stats., created by 2005 Wisconsin Act 140, regulates access to consumer credit reports. The law permits a consumer to create a “security freeze” on his or her consumer credit report. A security freeze limits the release and distribution of the consumer credit report. At any time after creating a security freeze, the consumer may ask the consumer reporting agency to release the consumer’s credit report for a specified period of time, or to terminate the security freeze altogether.

A consumer who asks a consumer reporting agency to create or release a security freeze must provide information to verify the consumer's identity. Under s. 100.54(12), Stats., DATCP must adopt rules to define what constitutes proper identification. Under s. 100.20(2), Stats., DATCP may prohibit unfair business practices (including unfair credit reporting practices) and require fair practices.

This rule does all of the following:

- Spells out the information that a consumer reporting agency may require of a consumer who asks the agency to create a security freeze, in order to verify the consumer's identity.
- Spells out the information that a consumer reporting agency may require of a consumer who asks the agency to release or terminate a security freeze, in order to verify the consumer's identity. The agency may require the same information that it required to create the security freeze and may, in addition, require a password assigned to the consumer when the security freeze was created.
- Requires consumer reporting agencies to spell out written procedures for complying with this rule and s. 100.54, Stats.

Federal and Surrounding State Regulations

Federal Regulation

The federal Fair Credit Reporting Act of 2003 allows consumers who are victims of identity theft to place a fraud alert on their credit reports. If a consumer is not a victim of identity theft, they have no option under federal law to place a fraud alert or freeze on their credit report. For victims of identity theft, federal rules under 16 CFR § 614.1 spell out the information that a consumer reporting agency may use to verify the identity of consumers who ask the agency to create a fraud alert. Federal standards are consistent with the standards in s. 100.54, Stats., and this rule.

Surrounding State Regulations

Approximately 38 states have enacted laws that require consumer reporting agencies to freeze consumer credit reports upon request. Under all of those laws, consumer reporting agencies may require requesting consumers to submit information to verify their identity. Most states allow consumer reporting agencies to demand "information generally deemed sufficient to identify a person." If that information is insufficient, some states allow the

consumer reporting agency to request “additional information concerning the consumer’s employment and personal or family history in order to verify his or her identity.”

Of the states surrounding Wisconsin, Illinois and Minnesota have enacted security freeze legislation. Security freeze legislation has been introduced, but not yet enacted, in Iowa and Michigan.

The Minnesota law took effect on August 1, 2006 and the Illinois law will take effect on January 1, 2006. The Minnesota and Illinois laws, like most other state laws on the subject, allow consumer reporting agencies to demand “information generally deemed sufficient to identify a person.” If that information is insufficient, Illinois law allows the consumer reporting agency to request “additional information concerning the consumer’s employment and personal or family history in order to verify his or her identity.”

Business Impact Analysis

This rule only affects consumer reporting agencies by regulating how the agency may identify consumers who request security freezes or changes to their security freeze status. The rule has no effect on a business that is not a consumer reporting agency. Currently, there are only 3 major consumer reporting agencies operating in the United States. None of these are small businesses. A complete Business Impact Analysis is attached.

Fiscal Estimate

This rule will have no significant fiscal impact on DATCP or local units of government. A complete Fiscal Estimate is attached.

DATCP Contact

Questions and comments related to this rule may be directed to:

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1 **SECTION 1.** Chapter ATCP 112 is created to read:

2 **Chapter ATCP 112**

3 **CREDIT REPORT SECURITY FREEZES**

4

1 **ATCP 112.01 Definitions.** In this chapter:

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

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

4

5 (3) “Proper identification” means information that is sufficient to confirm, with

6 reasonable assurance, that an individual is who he or she claims to be.

7 (4) “Security freeze” has the meaning given in s. 100.54(1)(e), Stats.

8 **ATCP 112.02 Proper identification to create a security freeze.** A consumer

9 reporting agency may require proper identification of an individual who requests a

10 security freeze under s. 100.54(2)(a), Stats. Proper identification may include any of the

11 following:

12 (1) The individual’s current full name, and prior names if any.

13 (2) The individual’s current address, and recent prior addresses if any.

14 (3) The individual’s social security number.

15 (4) The individual’s date of birth.

16 (5) Copies of appropriate identifying documents, if justified under s. ATCP

17 112.04. Identifying documents may include documents authorized under 16 CFR §

18 614.1.

19 (6) Identifying information, readily known by the individual in whose name the

20 security freeze is requested but not generally known by others, which the consumer

21 reporting agency lawfully obtained before receiving the security freeze request.

22 **ATCP 112.03 Proof of identity to release a credit report or remove a security**

23 **freeze.**

1 (1) A consumer reporting agency may require any of the following information
2 from an individual as proof of identity for purposes of ss.100.54(4)(a)2. and
3 100.54(6)(a)2., Stats.:

4 (a) Any identifying information or identifying document that complies with s.
5 ATCP 112.02.

6 (b) Except as provided in subs. (2), a personal identification number,
7 password, or other device or system that uniquely identifies the individual.

8 (2) In no case may the consumer reporting agency use a device or system that
9 requires the individual to provide identifying information that was not previously
10 obtained by the consumer reporting agency.

11 **NOTE:** Subsection (2) does not prohibit the credit reporting agency from accepting
12 new information from an individual who offers the information voluntarily. For example,
13 when a credit reporting agency is unable to grant a request to suspend a freeze because
14 the individual requesting the freeze cannot remember the password or provide other
15 identifying information, the credit reporting agency may accept new information offered
16 voluntarily by the individual for the purpose of establishing identity.

17
18 **ATCP 112.04 Written procedures.** A consumer reporting agency shall adopt
19 and implement written procedures for obtaining proper identification under s.
20 100.54(2)(a)2., 100.54(4)(a)2., and 100.54(6)(a)2., Stats. The procedures shall be
21 consistent with this chapter and s. 100.54, Stats. The procedures shall do all of the
22 following:

23 (1) Enable the consumer reporting agency to confirm the identity of a requesting
24 individual, so that the consumer reporting agency can correctly match the individual with
25 his or her file.

1 (2) Establish identification requirements that are commensurate with identifiable
2 risks of harm related to possible misidentification of individuals.

3 (3) Avoid requesting more information than necessary to confirm an individual's
4 identity unless the information is necessary for payment purposes.

5 **EFFECTIVE DATE:** This rule takes effect on the first day of the month following
6 publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro.),
7 Stats.

Dated this _____ day of _____, 2007.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen, Secretary