

House Financial Institutions Committee
Thursday, February 5, 2015
Testimony of Consumer Data Industry Association (CDIA)
In support of HB 2134 relating to Security Freezes for Teens
Presented by Ron Gaches

Thanks you Chairman DeGraaf for this opportunity to appear on behalf of the Consumer Data Industry Association (CDIA) and make comments regarding HB 2134. CDIA rises in support of HB 2134 and would like to recommend a few technical changes that will make Kansas law more consistent with the similar laws passed in 13 other states.

CDIA is the national trade group for the credit reporting industry. Our membership includes the three major credit reporting agencies as well as many businesses that use consumer credit reports to provide a variety of services to lenders and consumers.

In addition to the technical amendments described below, we'd like to ask that the effective date of the law be established as January 1, 2016. This timing will allow the impacted firms to complete the process and programming changes, and employee training necessary to comply with the revised Kansas law.

Technical changes

Amendment 1:

On page 2, amend lines 34 and 35 as follows:

(h) This section shall not apply to ~~the use of a protected consumer's consumer report or record by:~~

Reason for Amendment 1:

Credit files are maintained by the credit bureaus, commonly known as "the big three". The entities that should be exempt should be exempt from creating records and freezing credit files because they simply do not maintain credit files. These entities meet the statutory definition of "consumer reporting agencies", but they do not have credit files. All credit bureaus are consumer reporting agencies, but not all consumer reporting agencies are credit bureaus. The proposed amendment is consistent with the 13 other credit freeze for minors states.

Amendment 2

On page 3, amend line 1 as follows:

(3) a person or entity listed in K.S.A . 2014 Supp. 50-723(i)(1), (6) - (12), and amendments thereto, or K.S.A. 2014 Supp. 50-724(a)(1)-(5), and amendments thereto.

Reason for Amendment 2:

The “adult” freeze is far different than the “minor” freeze. The adult freeze is intended to allow commerce to occur under certain circumstances even if there is a freeze. The “minor” freeze is all about closing down commerce to prevent minors’ credit reports from being used in any commercial enterprises. The exemptions in 50-723(i)(2) – (5), are about allowing commerce to continue which should not be part of a “minor” freeze. The goal here is to prevent a minor’s credit report, if one exists, from being used for credit. The same logic noted above in who should be exempt from placing a security freeze or creating a record applies to the same exemptions in 50-724(a)(1)-(5). These are not “credit bureaus”, but they are consumer reporting agencies. Since they do not make, create or sell credit reports, they should not be required to place freezes or create records. This proposed amendment is consistent with the 13 other credit freeze for minors states.

Amendment 3:

On page 3, starting on line 8

~~(j) Any person who willfully fails to comply with any requirement imposed under this section with respect to any protected consumer is liable to that protected consumer in an amount equal to the sum of:~~

~~(1) Actual damages sustained by the protected consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or~~

~~(2) such amount of punitive damages as the court may allow; and (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney fees as determined by the court.~~

~~(k) Any person who obtains a consumer report, requests a security freeze, requests the temporary lift of a security freeze, or the removal of a security freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or \$1,000, whichever is greater.~~

~~(l) Any person who is negligent in failing to comply with any requirement imposed under this section with respect to any protected consumer, is liable to that protected consumer in an amount equal to the sum of:~~

~~(1) Any actual damages sustained by the protected consumer as a result of the failure; and (2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney fees as determined by the court.~~

~~(m) Upon a finding by the court that an unsuccessful pleading, motion or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney fees reasonable in relation to the work expended in responding to the pleading, motion or other paper.~~

Notwithstanding any other provision of law to the contrary, the exclusive authority to bring an action for any violation of this section shall be with the attorney general.

Reason for Amendment 3:

Consistent with 50-723(r), which limits liability for the “adult” credit freeze, the same should follow for the “minor” freeze. This is also consistent with the other state laws that have “minor” freezes.