

HOUSE BILL No. 2474

By Representatives Crow and Carlin, Colloton, Craft, Davis, Dillmore, Feuerborn, Flaharty, Goico, Goyle, Henderson, Kuether, Lane, Loganbill, Long, Lukert, Mah, McKinney, McLachlan, Myers, Neighbor, Palmer, Pauls, Phelps, Rardin, Ruff, Spalding, Storm, Svaty, Swenson, Tietze, Treaster, Trimmer, Wetta and Winn

2-7

13 AN ACT amending the fair credit reporting act; relating to placing a
14 security freeze on consumer reports; amending K.S.A. 2006 Supp. 50-
15 702 and 50-723 and repealing the existing sections.
16

17 *Be it enacted by the Legislature of the State of Kansas:*

18 Section 1. K.S.A. 2006 Supp. 50-702 is hereby amended to read as
19 follows: 50-702. The following words and phrases when used in the fair
20 credit reporting act shall have the meanings ascribed to them in this
21 section.

22 (a) The term “person” means any individual, partnership, corpora-
23 tion, trust, estate, cooperative, association, government or governmental
24 subdivision or agency, or other entity.

25 (b) The term “consumer” means an individual.

26 (c) The term “consumer report” means any written, oral, or other
27 communication of any information by a consumer reporting agency bear-
28 ing on a consumer’s credit worthiness, credit standing, credit capacity,
29 character, general reputation, personal characteristics, or mode of living
30 which is used or expected to be used or collected in whole or in part for
31 the purpose of serving as a factor in establishing the consumer’s eligibility
32 for credit or insurance to be used primarily for personal, family, or house-
33 hold purposes, or employment purposes, or other purposes authorized
34 under K.S.A. 50-703, and amendments thereto. The term does not in-
35 clude (1) any report containing information solely as to transactions or
36 experiences between the consumer and the person making the report; (2)
37 any authorization or approval of a specific extension of credit directly or
38 indirectly by the issuer of a credit card or similar device; or (3) any report
39 in which a person who has been requested by a third party to make a
40 specific extension of credit directly or indirectly to a consumer conveys
41 that decision with respect to such request, if the third party advises the
42 consumer of the name and address of the person to whom the request
43 was made and such person makes the disclosures to the consumer re-

1 quired under K.S.A. 50-714, and amendments thereto.

2 (d) The term “investigative consumer report” means a consumer re-
3 port or portion thereof in which information on a consumer’s character,
4 general reputation, personal characteristics, or mode of living is obtained
5 through personal interviews with neighbors, friends, or associates of the
6 consumer reported on or with others with whom the consumer is ac-
7 quainted or who may have knowledge concerning any such items of in-
8 formation. However, such information shall not include specific factual
9 information on a consumer’s credit record obtained directly from a cred-
10 itor of the consumer or from a consumer reporting agency when such
11 information was obtained directly from a creditor of the consumer or from
12 the consumer.

13 (e) The term “consumer reporting agency” means any person which,
14 for monetary fees, dues, or on a cooperative nonprofit basis, regularly
15 engages in whole or in part in the practice of assembling or evaluating
16 consumer credit information or other information on consumers for the
17 purpose of furnishing consumer reports to third parties, and which uses
18 any means or facility of interstate commerce for the purpose of preparing
19 or furnishing consumer reports.

20 (f) The term “file,” when used in connection with information on any
21 consumer, means all of the information on that consumer recorded and
22 retained by a consumer reporting agency regardless of how the infor-
23 mation is stored.

24 (g) The term “employment purposes” when used in connection with
25 a consumer report means a report used for the purpose of evaluating a
26 consumer for employment, promotion, reassignment or retention as an
27 employee.

28 (h) The term “medical information” means information or records
29 obtained, with the consent of the individual to whom it relates, from
30 licensed physicians or medical practitioners, hospitals, clinics, or other
31 medical or medically related facilities.

32 (i) The term “clear and proper identification” means information
33 generally deemed sufficient to identify a person.

34 (j) The term “security freeze” means a notice placed on a consumer
35 report, at the request of the consumer and subject to certain exceptions,
36 that prohibits a consumer reporting agency from releasing the consumer’s
37 consumer report or credit score relating to the extension of credit, when
38 the consumer has been the victim of ~~identity~~ *identity theft or is a member*
39 *of a group who has experienced a security breach as defined in K.S.A.*
40 *2006 Supp. 50-7a01, and amendments thereto, and such member reason-*
41 *ably believes or suspects that such member may become a victim of iden-*
42 *tity theft.*

43 Sec. 2. K.S.A. 2006 Supp. 50-723 is hereby amended to read as fol-

1 lows: 50-723. (a) A consumer who is a victim of ~~identity~~ *identity theft or*
2 *is a member of a group who has experienced a security breach, as defined*
3 *in K.S.A. 2006 Supp. 50-7a01, and amendments thereto, and such member*
4 *reasonably believes or suspects that such member may become a victim*
5 *of identity theft,* may elect to place a security freeze on the consumer's
6 consumer report by written request, sent by certified mail, which in-
7 cludes, *if the consumer is a member of a group who has experienced a*
8 *security breach a copy of the notice required under K.S.A. 2006 Supp.*
9 *50-7a01, and amendments thereto, or if the consumer was a victim of*
10 *identity theft,* a valid copy of a police report, investigative report or com-
11 plaint the consumer has filed with a law enforcement agency about un-
12 lawful use of such consumer's personal information by another person
13 and *both shall provide* clear and proper identification, to a consumer
14 reporting agency, at an address designated by the consumer reporting
15 agency to receive such requests. A consumer reporting agency shall place
16 a security freeze on a consumer's consumer report no later than five
17 business days after receiving:
18 (1) A written request provided by this subsection; and
19 (2) proper identification.
20 (b) When a security freeze is in place, information from a consumer
21 report shall not be released to a third party without prior express au-
22 thorization from the consumer. This subsection shall not prevent a con-
23 sumer reporting agency from advising a third party that a security freeze
24 is in effect with respect to a consumer report.
25 (c) The consumer reporting agency, no later than 10 business days
26 after the date the agency places a security freeze, shall provide the con-
27 sumer with a unique personal identification number, password or similar
28 device to be used by the consumer when providing authorization for the
29 access to the consumer's consumer report for a specific period of time.
30 In addition, the consumer reporting agency shall simultaneously provide
31 to the consumer in writing the process of placing, removing and tempo-
32 rarily lifting a security freeze and the process for allowing access to in-
33 formation from the consumer's consumer report for a specific period
34 while the security freeze is in effect.
35 (d) If, in connection with an application for credit or any other use,
36 a third party requests access to a consumer report on which a security
37 freeze is in effect, the third party shall treat the application as incomplete
38 if the consumer does not allow the consumer's consumer report to be
39 accessed for that specific period of time.
40 (e) If the consumer wishes to allow the consumer's consumer report
41 or score to be accessed for a specific period of time while a freeze is in
42 place, the consumer shall contact the consumer reporting agency, request
43 that the freeze be temporarily lifted and provide the following:

- 1 (1) Clear and proper identification;
- 2 (2) the unique personal identification number or password provided
- 3 by the consumer reporting agency in accordance with subsection (c); and
- 4 (3) the proper information regarding the time period for which the
- 5 report shall be available to users of the consumer report.
- 6 (f) A consumer reporting agency that receives a request from a con-
- 7 sumer to temporarily lift a freeze on a consumer report pursuant to sub-
- 8 section (e) shall comply with the request no later than three business days
- 9 after receiving the request. A consumer reporting agency may develop
- 10 procedures involving the use of telephone, fax, the internet or other elec-
- 11 tronic media to receive and process a request from a consumer to tem-
- 12 porarily lift a freeze on a consumer report pursuant to subsection (e) in
- 13 an expedited manner.
- 14 (g) A consumer reporting agency shall remove or temporarily lift a
- 15 freeze placed on a consumer's consumer report only in the following
- 16 cases:
- 17 (1) Upon consumer request as provided in this section; or
- 18 (2) if the consumer's consumer report was frozen due to a material
- 19 misrepresentation of fact by the consumer, in which case, if a consumer
- 20 reporting agency intends to remove a freeze upon the consumer's con-
- 21 sumer report, the consumer reporting agency shall notify the consumer
- 22 in writing prior to removing the freeze on the consumer's consumer
- 23 report.
- 24 (h) A security freeze shall remain in place until the consumer re-
- 25 quests that the security freeze be removed. A consumer reporting agency
- 26 shall remove a security freeze within three business days after receiving
- 27 a request for removal from the consumer, who shall be required to
- 28 provide:
- 29 (1) Clear and proper identification; and
- 30 (2) the unique personal identification number or password provided
- 31 by the consumer reporting agency in accordance with subsection (c).
- 32 (j) A security freeze does not apply to a consumer report provided
- 33 to:
- 34 (1) A federal, state or local governmental entity, including a law en-
- 35 forcement agency or court, or agents or assigns thereof;
- 36 (2) a private collection agency for the sole purpose of assisting in the
- 37 collection of an existing debt of the consumer who is the subject of the
- 38 consumer report requested;
- 39 (3) a person or entity, or a subsidiary, affiliate or agent of such person
- 40 or entity, or an assignee of a financial obligation owing by the consumer
- 41 to such person or entity, or a prospective assignee of a financial obligation
- 42 owing by the consumer to such person or entity in conjunction with the
- 43 proposed purchase of the financial obligation, with which the consumer

- 1 has or had prior to assignment of an account or contract, including a
2 demand deposit account, or to whom the consumer issued a negotiable
3 instrument, for the purposes of reviewing the account or collecting the
4 financial obligation owing for the account, contract, or negotiable instru-
5 ment. For purposes of this paragraph, “reviewing the account” includes
6 activities related to account maintenance, monitoring, credit line in-
7 creases and account upgrades and enhancements;
- 8 (4) a subsidiary, affiliate, agent, assignee or prospective assignee of a
9 person to whom access has been granted under subsection (e) for the
10 purposes of facilitating the extension of credit;
- 11 (5) a person providing a credit report for the purposes permitted
12 under 15 U.S.C. § 1681b(c);
- 13 (6) any person providing a consumer with a copy of the consumer’s
14 own report at such consumer’s request;
- 15 (7) a child support enforcement agency;
- 16 (8) a consumer reporting agency that acts only as a reseller of credit
17 information by assembling and merging information contained in the da-
18 tabase of another consumer reporting agency or multiple consumer re-
19 porting agencies and does not maintain a permanent database of credit
20 information from which new consumer reports are produced; however, a
21 consumer reporting agency acting as a reseller shall honor any security
22 freeze placed on a consumer report by another consumer reporting
23 agency;
- 24 (9) a check services or fraud prevention services company, which is-
25 sues reports on incidents of fraud or authorizations for the purpose of
26 approving or processing negotiable instruments, electronic funds trans-
27 fers or similar methods of payments;
- 28 (10) a deposit account information service company which issues to
29 inquiring banks or other financial institutions, for use only in reviewing a
30 consumer request for a deposit account at the inquiring bank or financial
31 institution, reports regarding account closures due to fraud, substantial
32 overdrafts, ATM abuse or similar negative information regarding a
33 consumer;
- 34 (11) an employer in connection with any application for employment
35 with the employer;
- 36 (12) any person administering a credit file monitoring subscription
37 service to which the consumer has subscribed; or
- 38 (13) any person or entity for use in setting or adjusting a rate, ad-
39 justing a claim or underwriting for insurance purposes.
- 40 (j) A consumer reporting agency shall not charge a fee for placing,
41 temporarily lifting or removing a security freeze on a consumer report.
- 42 (k) If a security freeze is in place, a consumer reporting agency shall
43 not change any of the following official information in the consumer re-

1 port without sending a written confirmation of the change to the con-
2 sumer within 30 days after the change is posted to the consumer's file:
3 Name, date of birth, social security number and address. Written confir-
4 mation is not required for technical modifications of a consumer's official
5 information, including name and street abbreviations, complete spellings
6 or transposition of numbers or letters. In the case of an address change,
7 the written confirmation shall be sent to both the new address and to the
8 former address.

9 (l) Any person who willfully fails to comply with any requirement
10 imposed under this subchapter with respect to any consumer is liable to
11 that consumer in an amount equal to the sum of:

12 (1) Actual damages sustained by the consumer as a result of the fail-
13 ure or damages of not less than \$100 and not more than \$1,000; or

14 (2) such amount of punitive damages as the court may allow; and

15 (3) in the case of any successful action to enforce any liability under
16 this section, the costs of the action together with reasonable attorney's
17 fees as determined by the court.

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

24 (n) Any person who is negligent in failing to comply with any require-
25 ment imposed under this section with respect to any consumer, is liable
26 to that consumer in an amount equal to the sum of:

27 (1) Any actual damages sustained by the consumer as a result of the
28 failure; and

29 (2) in the case of any successful action to enforce any liability under
30 this section, the costs of the action together with reasonable attorney's
31 fees as determined by the court.

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

37 (p) This section shall be part of and supplemental to the fair credit
38 reporting act.

39 (q) This section shall take effect and be in force on and after January
40 1, 2007.

41 Sec. 3. K.S.A. 2006 Supp. 50-702 and 50-723 are hereby repealed.

42 Sec. 4. This act shall take effect and be in force from and after its
43 publication in the statute book.