

## SENATE BILL No. 644

By Committee on Ways and Means

2-19

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9 AN ACT concerning protection of certain personal information; restrict-  
10 ing disclosure or use of certain acts and providing penalties and rem-  
11 edies for violations; amending K.S.A. 2007 Supp. 50-702 and 50-723  
12 and repealing the existing sections.  
13

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

15 Section 1. K.S.A. 2007 Supp. 50-702 is hereby amended to read as  
16 follows: 50-702. The following words and phrases when used in the fair  
17 credit reporting act shall have the meanings ascribed to them in this  
18 section.

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

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

23 (c) The term “consumer report” means any written, oral, or other  
24 communication of any information by a consumer reporting agency bear-  
25 ing on a consumer’s credit worthiness, credit standing, credit capacity,  
26 character, general reputation, personal characteristics, or mode of living  
27 which is used or expected to be used or collected in whole or in part for  
28 the purpose of serving as a factor in establishing the consumer’s eligibility  
29 for credit or insurance to be used primarily for personal, family, or house-  
30 hold purposes, or employment purposes, or other purposes authorized  
31 under K.S.A. 50-703, and amendments thereto. The term does not in-  
32 clude (1) any report containing information solely as to transactions or  
33 experiences between the consumer and the person making the report; (2)  
34 any authorization or approval of a specific extension of credit directly or  
35 indirectly by the issuer of a credit card or similar device; or (3) any report  
36 in which a person who has been requested by a third party to make a  
37 specific extension of credit directly or indirectly to a consumer conveys  
38 that decision with respect to such request, if the third party advises the  
39 consumer of the name and address of the person to whom the request  
40 was made and such person makes the disclosures to the consumer re-  
41 quired under K.S.A. 50-714, and amendments thereto.

42 (d) The term “investigative consumer report” means a consumer re-  
43 port or portion thereof in which information on a consumer’s character,

1 general reputation, personal characteristics, or mode of living is obtained  
2 through personal interviews with neighbors, friends, or associates of the  
3 consumer reported on or with others with whom the consumer is ac-  
4 quainted or who may have knowledge concerning any such items of in-  
5 formation. However, such information shall not include specific factual  
6 information on a consumer's credit record obtained directly from a cred-  
7 itor of the consumer or from a consumer reporting agency when such  
8 information was obtained directly from a creditor of the consumer or from  
9 the consumer.

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

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

21 (g) The term "employment purposes" when used in connection with  
22 a consumer report means a report used for the purpose of evaluating a  
23 consumer for employment, promotion, reassignment or retention as an  
24 employee.

25 (h) The term "medical information" means information or records  
26 obtained, with the consent of the individual to whom it relates, from  
27 licensed physicians or medical practitioners, hospitals, clinics, or other  
28 medical or medically related facilities.

29 (i) The term "clear and proper identification" means information  
30 generally deemed sufficient to identify a person.

31 (j) The term "security freeze" means a notice placed on a consumer  
32 report, at the request of the consumer and subject to certain exceptions,  
33 that prohibits a consumer reporting agency from releasing *all or any part*  
34 *of the consumer's consumer report or credit score relating to the exten-*  
35 *sion of credit, when the consumer has been the victim of identity theft,*  
36 *or any information derived from it without the express authorization of*  
37 *the consumer. If a security freeze is in place, such a report or information*  
38 *may not be released to a third party without prior written authorization*  
39 *from the consumer. A security freeze does not prevent a consumer re-*  
40 *porting agency from advising a third party that such security freeze is in*  
41 *effect for the consumer's credit report.*

42 Sec. 2. K.S.A. 2007 Supp. 50-723 is hereby amended to read as fol-  
43 lows: 50-723. (a) A consumer who is a victim of identity theft may elect

- 1 ~~to place a security freeze on the consumer's consumer report by written~~  
2 ~~request, sent by certified mail, which includes a valid copy of a police~~  
3 ~~report, investigative report or complaint the consumer has filed with a~~  
4 ~~law enforcement agency about unlawful use of such consumer's personal~~  
5 ~~information by another person and clear and proper identification, to a~~  
6 ~~consumer reporting agency, at an address designated by the consumer~~  
7 ~~reporting agency to receive such requests. A consumer reporting agency~~  
8 ~~shall place a security freeze on a consumer's consumer report no later~~  
9 ~~than five business days after receiving:~~
- 10 ~~(1) A written request provided by this subsection, and~~  
11 ~~(2) proper identification.~~
- 12 *(a) A consumer who has been the victim of identity theft, or the sus-*  
13 *pected victim of identity theft, may contact the local law enforcement*  
14 *agency with jurisdiction over the complainant. The local law enforcement*  
15 *shall take a police report of the incident and provide a copy of such report*  
16 *to the complainant. If the law enforcement agency lacks jurisdiction over*  
17 *the complainant, it shall make the appropriate procedural steps to record*  
18 *the complaint and refer it to the proper jurisdiction.*
- 19 *(b) Nothing in this section shall interfere with the discretion of a local*  
20 *law enforcement agency to allocate resources for investigations of crimes.*  
21 *A complaint filed under this section shall not be required to be counted*  
22 *as an open case for purposes such as compiling open case statistics.*
- 23 *(c) A security freeze may be put on a consumer report as follows:*
- 24 *(1) By written request, by certified or regular mail, to the consumer*  
25 *reporting agency at an address designated by the consumer reporting*  
26 *agency to receive such requests;*
- 27 *(2) by telephone at a number to be designated by the consumer re-*  
28 *porting agency by September 1, 2008; or*
- 29 *(3) by making the request directly to the consumer reporting agency*  
30 *through a secure website or a secure electronic mail connection or fax*  
31 *that shall be made available by the consumer reporting agency by Sep-*  
32 *tember 1, 2008. All requests must contain clear and proper identifying*  
33 *information.*
- 34 *(d) Except as provided further, the consumer reporting agency shall*  
35 *place a security freeze on a consumer's consumer report no later than*  
36 *three business days after receiving the request for placing the freeze by*  
37 *mail. Beginning on September 1, 2008, requests to place a security freeze*  
38 *received by telephone, fax, secure website or secure electronic mail shall*  
39 *be placed within 15 minutes after the request is received. On and after*  
40 *July 1, 2009, the consumer reporting agency shall place a security freeze*  
41 *on a consumer's consumer report no later than 24 hours after receiving*  
42 *the request for placing the freeze by mail.*
- 43 *(e) The following fees and limitations on fees shall apply to security*

1 freeze transactions:

2 (1) A consumer, who is the victim or suspected victim of identity theft,  
3 shall not be charged a fee for any security freeze services, including, but  
4 not limited to, the placement of temporary lifting of or removal of such  
5 security freeze;

6 (2) a consumer, who is not a victim or suspected victim of identity  
7 theft, shall not be charged a fee of more than \$5 for any security freeze  
8 service, including the placement or removal of a security freeze. No fee  
9 shall be assessed for the temporary lifting of a security freeze;

10 (3) a consumer shall not be assessed a fee of more than \$5 for the loss  
11 of a personal identification number provided by the consumer reporting  
12 agency, and shall not be assessed a fee of more than \$5 for subsequent  
13 instances of loss of such number. A consumer shall not be charged a fee  
14 for the reissuance of the same or a new personal identification number.

15 ~~(b)~~ (f) When a security freeze is in place, information from a con-  
16 sumer report shall not be released to a third party without prior express  
17 authorization from the consumer. This subsection shall not prevent a  
18 consumer reporting agency from advising a third party that a security  
19 freeze is in effect with respect to a consumer report.

20 ~~(c)~~ (g) The consumer reporting agency, no later than 10 business days  
21 after the date the agency places a security freeze, shall provide the con-  
22 sumer with a unique personal identification number, password or similar  
23 device to be used by the consumer when providing authorization for the  
24 access to the consumer's consumer report for a specific period of time.  
25 In addition, the consumer reporting agency shall simultaneously provide  
26 to the consumer in writing the process of placing, removing and tempo-  
27 rarily lifting a security freeze and the process for allowing access to in-  
28 formation from the consumer's consumer report for a specific period  
29 while the security freeze is in effect.

30 ~~(d)~~ (h) If, in connection with an application for credit or any other  
31 use, a third party requests access to a consumer report on which a security  
32 freeze is in effect, the third party shall treat the application as incomplete  
33 if the consumer does not allow the consumer's consumer report to be  
34 accessed for that specific period of time.

35 ~~(e)~~ (i) If the consumer wishes to allow the consumer's consumer re-  
36 port or score to be accessed for a specific period of time while a freeze  
37 is in place, the consumer shall contact the consumer reporting agency,  
38 request that the freeze be temporarily lifted and provide the following:

39 (1) Clear and proper identification;

40 (2) the unique personal identification number or password provided  
41 by the consumer reporting agency in accordance with subsection (c); and

42 (3) the proper information regarding the time period for which the  
43 report shall be available to users of the consumer report.

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

- 1 activities related to account maintenance, monitoring, credit line in-  
2 creases and account upgrades and enhancements;
- 3 (4) a subsidiary, affiliate, agent, assignee or prospective assignee of a  
4 person to whom access has been granted under subsection (e) for the  
5 purposes of facilitating the extension of credit;
- 6 (5) a person providing a credit report for the purposes permitted  
7 under 15 U.S.C. § 1681b(c);
- 8 (6) any person providing a consumer with a copy of the consumer's  
9 own report at such consumer's request;
- 10 (7) a child support enforcement agency;
- 11 (8) a consumer reporting agency that acts only as a reseller of credit  
12 information by assembling and merging information contained in the da-  
13 tabase of another consumer reporting agency or multiple consumer re-  
14 porting agencies and does not maintain a permanent database of credit  
15 information from which new consumer reports are produced; however, a  
16 consumer reporting agency acting as a reseller shall honor any security  
17 freeze placed on a consumer report by another consumer reporting  
18 agency;
- 19 (9) a check services or fraud prevention services company, which is-  
20 sues reports on incidents of fraud or authorizations for the purpose of  
21 approving or processing negotiable instruments, electronic funds trans-  
22 fers or similar methods of payments;
- 23 (10) a deposit account information service company which issues to  
24 inquiring banks or other financial institutions, for use only in reviewing a  
25 consumer request for a deposit account at the inquiring bank or financial  
26 institution, reports regarding account closures due to fraud, substantial  
27 overdrafts, ATM abuse or similar negative information regarding a  
28 consumer;
- 29 (11) an employer in connection with any application for employment  
30 with the employer;
- 31 (12) any person administering a credit file monitoring subscription  
32 service to which the consumer has subscribed; or
- 33 (13) any person or entity for use in setting or adjusting a rate, ad-  
34 justing a claim or underwriting for insurance purposes.
- 35 ~~(j)~~ (n) A consumer reporting agency shall not charge a fee for placing,  
36 temporarily lifting or removing a security freeze on a consumer report.
- 37 ~~(k)~~ (o) If a security freeze is in place, a consumer reporting agency  
38 shall not change any of the following official information in the consumer  
39 report without sending a written confirmation of the change to the con-  
40 sumer within 30 days after the change is posted to the consumer's file:  
41 Name, date of birth, social security number and address. Written confir-  
42 mation is not required for technical modifications of a consumer's official  
43 information, including name and street abbreviations, complete spellings

1 or transposition of numbers or letters. In the case of an address change,  
2 the written confirmation shall be sent to both the new address and to the  
3 former address.

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

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

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

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

13 ~~(m)~~ (p) Any person who obtains a consumer report, requests a se-  
14 curity freeze, requests the temporary lift of a freeze, or the removal of a  
15 security freeze from a consumer reporting agency under false pretenses  
16 or in an attempt to violate federal or state law shall be liable to the con-  
17 sumer reporting agency for actual damages sustained by the consumer  
18 reporting agency or \$1,000, whichever is greater.

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

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

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

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

32 ~~(p)~~ (s) This section shall be part of and supplemental to the fair credit  
33 reporting act.

34 ~~(q)~~ (t) This section shall take effect and be in force on and after  
35 January 1, 2007.

36 New Sec. 3. The provisions of this act are severable. If any phrase,  
37 clause, sentence, provision or section is declared to be invalid or pre-  
38 empted, in whole or in part, by federal law or regulation, the validity of  
39 the remainder of this act shall remain unaffected.

40 Sec. 4. K.S.A. 2007 Supp. 50-702 and 50-723 are hereby repealed.

41 Sec. 5. This act shall take effect and be in force from and after its  
42 publication in the statute book.