

## HOUSE BILL No. 2245

By Representatives Rardin and Worley, Bowers, Burgess, Burroughs, Flaherty, Frownfelter, Garcia, Henderson, Hill, Huntington, Kleeb, Kuether, Lukert, Maloney, McCray-Miller, Moxley, Pottorff, Prescott, Quigley, Spalding, Swanson, Tietze, Trimmer, Vickrey, Wetta, Winn and K. Wolf

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13 AN ACT amending the fair credit reporting act; relating to placing a  
14 security freeze on consumer reports; amending K.S.A. 2008 Supp. 50-  
15 702 and 50-723 and repealing the existing sections.  
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17 *Be it enacted by the Legislature of the State of Kansas:*

18 Section 1. K.S.A. 2008 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 theft~~ *without express au-*  
39 *thorization of the consumer.*

40 Sec. 2. K.S.A. 2008 Supp. 50-723 is hereby amended to read as fol-  
41 lows: 50-723. (a) A consumer ~~who is a victim of identity theft~~ may elect  
42 to place a security freeze on the consumer’s consumer report by written  
43 request, sent by certified mail, which includes ~~a valid copy of a police~~

1 ~~report, investigative report or complaint the consumer has filed with a~~  
2 ~~law enforcement agency about unlawful use of such consumer's personal~~  
3 ~~information by another person and~~ clear and proper identification, to a  
4 consumer reporting agency, at an address designated by the consumer  
5 reporting agency to receive such requests. A consumer reporting agency  
6 shall place a security freeze on a consumer's consumer report no later  
7 than five business days after receiving:

- 8 (1) A written request provided by this subsection; and
- 9 (2) proper identification.

10 (b) When a security freeze is in place, information from a consumer  
11 report shall not be released to a third party without prior express au-  
12 thorization from the consumer. This subsection shall not prevent a con-  
13 sumer reporting agency from advising a third party that a security freeze  
14 is in effect with respect to a consumer report.

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

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

30 (e) If the consumer wishes to allow the consumer's consumer report  
31 or score to be accessed for a specific period of time while a freeze is in  
32 place, the consumer shall contact the consumer reporting agency, request  
33 that the freeze be temporarily lifted and provide the following:

- 34 (1) Clear and proper identification;
- 35 (2) the unique personal identification number or password provided  
36 by the consumer reporting agency in accordance with subsection (c); and
- 37 (3) the proper information regarding the time period for which the  
38 report shall be available to users of the consumer report.

39 (f) A consumer reporting agency that receives a request from a con-  
40 sumer to temporarily lift a freeze on a consumer report pursuant to sub-  
41 section (e) shall comply with the request no later than three business days  
42 after receiving the request. A consumer reporting agency may develop  
43 procedures involving the use of telephone, fax, the internet or other elec-

1 tronic media to receive and process a request from a consumer to tem-  
2 porarily lift a freeze on a consumer report pursuant to subsection (e) in  
3 an expedited manner.

4 (g) A consumer reporting agency shall remove or temporarily lift a  
5 freeze placed on a consumer's consumer report only in the following  
6 cases:

7 (1) Upon consumer request as provided in this section; or  
8 (2) if the consumer's consumer report was frozen due to a material  
9 misrepresentation of fact by the consumer, in which case, if a consumer  
10 reporting agency intends to remove a freeze upon the consumer's con-  
11 sumer report, the consumer reporting agency shall notify the consumer  
12 in writing prior to removing the freeze on the consumer's consumer  
13 report.

14 (h) A security freeze shall remain in place until the consumer re-  
15 quests that the security freeze be removed. A consumer reporting agency  
16 shall remove a security freeze within three business days after receiving  
17 a request for removal from the consumer, who shall be required to  
18 provide:

19 (1) Clear and proper identification; and  
20 (2) the unique personal identification number or password provided  
21 by the consumer reporting agency in accordance with subsection (c).

22 (i) A security freeze does not apply to a consumer report provided  
23 to:

24 (1) A federal, state or local governmental entity, including a law en-  
25 forcement agency or court, or agents or assigns thereof;

26 (2) a private collection agency for the sole purpose of assisting in the  
27 collection of an existing debt of the consumer who is the subject of the  
28 consumer report requested;

29 (3) a person or entity, or a subsidiary, affiliate or agent of such person  
30 or entity, or an assignee of a financial obligation owing by the consumer  
31 to such person or entity, or a prospective assignee of a financial obligation  
32 owing by the consumer to such person or entity in conjunction with the  
33 proposed purchase of the financial obligation, with which the consumer  
34 has or had prior to assignment of an account or contract, including a  
35 demand deposit account, or to whom the consumer issued a negotiable  
36 instrument, for the purposes of reviewing the account or collecting the  
37 financial obligation owing for the account, contract, or negotiable instru-  
38 ment. For purposes of this paragraph, "reviewing the account" includes  
39 activities related to account maintenance, monitoring, credit line in-  
40 creases and account upgrades and enhancements;

41 (4) a subsidiary, affiliate, agent, assignee or prospective assignee of a  
42 person to whom access has been granted under subsection (e) for the  
43 purposes of facilitating the extension of credit;

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

1 that consumer in an amount equal to the sum of:

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

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

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

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

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

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

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

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

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

29 (q) This section shall take effect and be in force on and after January  
30 1, 2007.

31 Sec. 3. K.S.A. 2008 Supp. 50-702 and 50-723 are hereby repealed.

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