

As Amended by House Committee

Session of 2015

HOUSE BILL No. 2134

By Committee on Appropriations

1-27

1 AN ACT concerning consumer credit; relating to security freezes on
2 protected consumer reports; amending K.S.A. 2014 Supp. 50-702 and
3 repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. (a) A consumer reporting agency shall place a
7 security freeze for a protected consumer if the consumer reporting agency
8 receives a request from the protected consumer's representative for the
9 placement of the security freeze and the protected consumer's
10 representative:

11 (1) Submits the request to the consumer reporting agency at the
12 address or other point of contact and in the manner specified by the
13 consumer reporting agency;

14 (2) provides to the consumer reporting agency sufficient proof of
15 identification of the protected consumer and the representative;

16 (3) provides to the consumer reporting agency sufficient proof of
17 authority to act on behalf of the protected consumer; and

18 (4) pays to the consumer reporting agency a fee as provided in
19 subsection (g).

20 (b) If a consumer reporting agency does not have a record pertaining
21 to a protected consumer when the consumer reporting agency receives a
22 request under subsection (a), the consumer reporting agency shall create a
23 record for the protected consumer.

24 (c) Within 30 days after receiving a request that meets the
25 requirements of subsection (a), a consumer reporting agency shall place a
26 security freeze for the protected consumer.

27 (d) Unless a security freeze for a protected consumer is removed in
28 accordance with subsection (f) or (i), a consumer reporting agency shall
29 not release the protected consumer's consumer report, any information
30 derived from the protected consumer's consumer report, or any record
31 created for the protected consumer.

32 (e) A security freeze for a protected consumer placed under
33 subsection (c) shall remain in effect until:

34 (1) The protected consumer or the protected consumer's
35 representative requests the consumer reporting agency to remove the
36 security freeze in accordance with subsection (f); ~~or~~

1 **(2) the protected consumer reaches 18 years of age; or**

2 ~~(2)~~ **(3)** the security freeze is removed in accordance with subsection
3 (i).

4 (f) (1) If a protected consumer or a protected consumer's
5 representative wishes to remove a security freeze for a protected consumer,
6 the protected consumer or the protected consumer's representative shall:

7 (A) Submit a request for the removal of the security freeze to the
8 consumer reporting agency at the address or other point of contact and in
9 the manner specified by the consumer reporting agency;

10 (B) provide to the consumer reporting agency sufficient proof of
11 identification of the protected consumer and:

12 (i) For a request by the protected consumer, proof that the sufficient
13 proof of authority for the protected consumer's representative to act on
14 behalf of the protected consumer is no longer valid; or

15 (ii) for a request by the representative of a protected consumer,
16 sufficient proof of identification of the representative and sufficient proof
17 of authority to act on behalf of the protected consumer; and

18 (C) pay to the consumer reporting agency a fee as provided in
19 subsection (g).

20 (g) (1) Except as otherwise provided in subsection (g)(2), a consumer
21 reporting agency shall not charge a fee for any service performed under
22 this section.

23 (2) A consumer reporting agency may charge a reasonable fee, not
24 exceeding \$10, for each placement or removal of a security freeze for a
25 protected consumer, except a consumer reporting agency shall not charge
26 any fee under this section if:

27 (A) The protected consumer's representative has obtained a police
28 report or **provided an** affidavit of alleged fraud against the protected
29 consumer and provides a copy of the report ~~of or~~ the affidavit to the
30 consumer reporting agency; or

31 (B) a request for the placement or removal of a security freeze is for a
32 protected consumer who is under the age of 18 years at the time of the
33 request and the consumer reporting agency has a consumer report
34 pertaining to the protected consumer.

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

37 (1) A person administering a credit file monitoring subscription
38 service to which the protected consumer has subscribed or the
39 representative of the protected consumer has subscribed on behalf of the
40 protected consumer;

41 (2) a person providing the protected consumer or the protected
42 consumer's representative with a copy of the protected consumer's
43 consumer report on request of the protected consumer or the protected

1 consumer's representative; or

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

4 (i) A consumer reporting agency may remove a security freeze for a
5 protected consumer or delete a record of a protected consumer if such
6 security freeze was placed or the record was created based on a material
7 misrepresentation of a fact by the protected consumer or the protected
8 consumer's representative.

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

12 ~~(1) Actual damages sustained by the protected consumer as a result of~~
13 ~~the failure 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 fees~~
17 ~~as determined by the court.~~

18 ~~(k) Any person who obtains a consumer report, requests a security~~
19 ~~freeze, requests the temporary lift of a security freeze, or the removal of a~~
20 ~~security freeze from a consumer reporting agency under false pretenses or~~
21 ~~in an 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 ~~(l) Any person who is negligent in failing to comply with any~~
25 ~~requirement imposed under this section with respect to any protected~~
26 ~~consumer, is liable to that protected consumer in an amount equal to the~~
27 ~~sum of:~~

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

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

33 ~~(m) Upon a finding by the court that an unsuccessful pleading,~~
34 ~~motion or other paper filed in connection with an action under this section~~
35 ~~was filed in bad faith or for purposes of harassment, the court shall award~~
36 ~~to the prevailing party attorney fees reasonable in relation to the work~~
37 ~~expended in responding to the pleading, motion or other paper **shall be**~~
38 **liable pursuant to the provisions of the fair credit reporting act.**

39 ~~(n) (k)~~ This section shall be part of and supplemental to the fair credit
40 reporting act.

41 Sec. 2. K.S.A. 2014 Supp. 50-702 is hereby amended to read as
42 follows: 50-702. The following words and phrases when used in the fair
43 credit reporting act shall have the meanings ascribed to them in this

1 section.

2 (a) The term "person" means any individual, partnership, corporation,
3 trust, estate, cooperative, association, government or governmental
4 subdivision or agency, or other entity.

5 (b) The term "consumer" means an individual.

6 (c) The term "consumer report" means any written, oral, or other
7 communication of any information by a consumer reporting agency
8 bearing on a consumer's credit worthiness, credit standing, credit capacity,
9 character, general reputation, personal characteristics, or mode of living
10 which is used or expected to be used or collected in whole or in part for
11 the purpose of serving as a factor in establishing the consumer's eligibility
12 for credit or insurance to be used primarily for personal, family, or
13 household purposes, or employment purposes, or other purposes
14 authorized under K.S.A. 50-703, and amendments thereto. The term does
15 not include:

16 (1) Any report containing information solely as to transactions or
17 experiences between the consumer and the person making the report;

18 (2) any authorization or approval of a specific extension of credit
19 directly or indirectly by the issuer of a credit card or similar device; or

20 (3) any report in which a person who has been requested by a third
21 party to make a specific extension of credit directly or indirectly to a
22 consumer conveys that decision with respect to such request, if the third
23 party advises the consumer of the name and address of the person to whom
24 the request was made and such person makes the disclosures to the
25 consumer required under K.S.A. 50-714, and amendments thereto.

26 (d) The term "investigative consumer report" means a consumer
27 report or portion thereof in which information on a consumer's character,
28 general reputation, personal characteristics, or mode of living is obtained
29 through personal interviews with neighbors, friends, or associates of the
30 consumer reported on or with others with whom the consumer is
31 acquainted or who may have knowledge concerning any such items of
32 information. However, such information shall not include specific factual
33 information on a consumer's credit record obtained directly from a creditor
34 of the consumer or from a consumer reporting agency when such
35 information was obtained directly from a creditor of the consumer or from
36 the consumer.

37 (e) The term "consumer reporting agency" means any person which,
38 for monetary fees, dues, or on a cooperative nonprofit basis, regularly
39 engages in whole or in part in the practice of assembling or evaluating
40 consumer credit information or other information on consumers for the
41 purpose of furnishing consumer reports to third parties, and which uses
42 any means or facility of interstate commerce for the purpose of preparing
43 or furnishing consumer reports.

1 (f) The term "file," when used in connection with information on any
2 consumer, means all of the information on that consumer recorded and
3 retained by a consumer reporting agency regardless of how the
4 information is stored.

5 (g) The term "employment purposes" when used in connection with a
6 consumer report means a report used for the purpose of evaluating a
7 consumer for employment, promotion, reassignment or retention as an
8 employee.

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

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

15 (j) The term "security freeze" means a notice placed on a consumer
16 report, at the request of the consumer and subject to certain exceptions,
17 that prohibits a consumer reporting agency from releasing the consumer's
18 consumer report or credit score relating to the extension of credit.

19 (k) *The term "protected consumer" means an individual who is:*

20 (1) *Under the age of 18 years at the time a request for the placement*
21 *of a security freeze is made under section 1, and amendments thereto; or*

22 (2) *an individual for whom a guardian or conservator has been*
23 *appointed.*

24 (l) *The term "record" means a compilation of information about a*
25 *protected consumer that satisfies all of the following:*

26 (1) *The compilation identifies the protected consumer; and*

27 (2) *the compilation is created by a consumer reporting agency solely*
28 *for the purpose of complying with section 1, and amendments thereto.*

29 (m) *The term "security freeze for a protected consumer" means one of*
30 *the following:*

31 (1) *If a consumer reporting agency does not have a file pertaining to*
32 *a protected consumer, a restriction placed on the protected consumer's*
33 *record that prohibits the consumer reporting agency from releasing the*
34 *protected consumer's record; or*

35 (2) *if a consumer reporting agency has a file pertaining to the*
36 *protected consumer, a restriction placed on the protected consumer's*
37 *consumer report that prohibits the consumer reporting agency from*
38 *releasing the protected consumer's consumer report or any information*
39 *derived from the protected consumer's consumer report.*

40 (n) *The term "sufficient proof of authority" means documentation that*
41 *shows a representative has authority to act on behalf of a protected*
42 *consumer, including any of the following:*

43 (1) *An order issued by a court;*

1 (2) *a lawfully executed and valid power of attorney; or*

2 (3) *a written, notarized statement signed by a representative that*
3 *expressly describes the authority of the representative to act on behalf of a*
4 *protected consumer.*

5 (o) *The term "sufficient proof of identification" means information or*
6 *documentation that identifies a protected consumer or a representative of*
7 *a protected consumer, including any of the following:*

8 (1) *A social security number or a copy of a social security card*
9 *issued by the social security administration; or*

10 (2) *a certified or official copy of a birth certificate issued by the*
11 *entity authorized to issue the birth certificate.*

12 Sec. 3. K.S.A. 2014 Supp. 50-702 is hereby repealed.

13 Sec. 4. This act shall take effect and be in force from and after
14 **January 1, 2016, and** its publication in the statute book.