

HOUSE BILL No. 2438

By Committee on Federal and State Affairs

2-10

9 AN ACT amending and supplementing the fair credit reporting act; pro-
10 viding for nondisclosure of certain information under certain circum-
11 stances; providing remedies for violations; amending K.S.A. 50-702
12 and repealing the existing section.
13

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

15 Section 1. K.S.A. 50-702 is hereby amended to read as follows: 50-
16 702. The following words and phrases when used in ~~K.S.A. 50-701 to 50-~~
17 ~~722, inclusive, and amendments thereto, the fair credit reporting act~~ shall
18 have the meanings ascribed to them in this 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 include
32 (1) any report containing information solely as to transactions or experi-
33 ences between the consumer and the person making the report; (2) any
34 authorization or approval of a specific extension of credit directly or in-
35 directly 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 gen-*
30 *erally deemed sufficient to identify a person.*

31 (j) *The term "security freeze" means a notice placed on a consumer*
32 *file, at the request of the consumer and subject to certain exceptions, that*
33 *prohibits a consumer reporting agency from releasing the consumer's con-*
34 *sumer report or credit score without the express authorization of the*
35 *consumer.*

36 New Sec. 2. (a) A consumer may elect to place a security freeze on
37 such consumer's consumer report by written request, sent by certified
38 mail, which includes clear and proper identification, to a consumer re-
39 porting agency. A consumer reporting agency shall place a security freeze
40 on a consumer's consumer report no later than ten business days after
41 receiving a written request for the security freeze from the consumer.

42 (b) When a security freeze is in place, information from a consumer
43 report shall not be released to a third party without prior express au-

1 authorization from the consumer. This subsection shall not prevent a con-
2 sumer reporting agency from advising a third party that a security freeze
3 is in effect with respect to a consumer report.

4 (c) The consumer reporting agency, no later than 10 business days
5 after the date the agency receives a request for a security freeze, shall
6 provide the consumer with a unique personal identification number or
7 password to be used by the consumer when providing authorization for
8 the access to the consumer's consumer file for a specific period of time.
9 In addition, the consumer reporting agency shall simultaneously provide
10 to the consumer in writing the process of placing, removing and tempo-
11 rarily lifting a security freeze and the process for allowing access to in-
12 formation from the consumer's consumer file for a specific period while
13 the security freeze is in effect.

14 (d) A consumer may request in writing a replacement personal iden-
15 tification number or password. The request shall comply with the require-
16 ments for requesting a security freeze pursuant to subsection (a). The
17 consumer reporting agency, not later than the 7th business day after the
18 date the agency receives the request for a replacement personal identi-
19 fication number or password, shall provide the consumer with a new,
20 unique personal identification number or password to be used by the
21 consumer instead of the number or password provided pursuant to sub-
22 section (c).

23 (e) A consumer reporting agency shall notify a person who requests
24 a consumer report or score if a security freeze is in effect for the consumer
25 file involved in that report or score.

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

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

35 (1) Clear and proper identification;
36 (2) the unique personal identification number or password provided
37 by the consumer reporting agency in accordance with subsection (c) or
38 (d); and

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

41 (h) A consumer reporting agency that receives a request from a con-
42 sumer to temporarily lift a freeze on a consumer report pursuant to sub-
43 section (g) shall comply with the request no later than three business days

1 after receiving the request. A consumer reporting agency may develop
2 procedures involving the use of telephone, fax, the internet or other elec-
3 tronic media to receive and process a request from a consumer to tem-
4 porarily lift a freeze on a consumer report or score pursuant to subsection
5 (g) in an expedited manner.

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

9 (1) Upon consumer request as provided in this section; or

10 (2) if the consumer's consumer report was frozen due to a material
11 misrepresentation of fact by the consumer, in which case, if a consumer
12 reporting agency intends to remove a freeze upon the consumer's con-
13 sumer report, the consumer reporting agency shall notify the consumer
14 in writing prior to removing the freeze on the consumer's consumer
15 report.

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

20 (1) Clear and proper identification; and

21 (2) the unique personal identification number or password provided
22 by the consumer reporting agency in accordance with subsection (c) or
23 (d).

24 (k) A security freeze does not apply to a consumer report provided
25 to:

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

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

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

43 (4) a subsidiary, affiliate, agent, assignee, or prospective assignee of

- 1 a person to whom access has been granted under subsection (g) for the
2 purposes of facilitating the extension of credit;
- 3 (5) a person, for the purposes of prescreening as provided by the
4 federal fair credit reporting act, 15 U.S.C. §1681b;
- 5 (6) a consumer reporting agency for the purposes of providing a con-
6 sumer with a copy of the consumer's own report at such consumer's
7 request;
- 8 (7) a child support enforcement agency;
- 9 (8) a consumer reporting agency that acts only as a reseller of credit
10 information by assembling and merging information contained in the da-
11 tabase of another consumer reporting agency or multiple consumer re-
12 porting agencies and does not maintain a permanent database of credit
13 information from which new consumer reports are produced; however, a
14 consumer reporting agency acting as a reseller shall honor any security
15 freeze placed on a consumer report by another consumer reporting
16 agency;
- 17 (9) a check services or fraud prevention services company, which is-
18 sues reports on incidents of fraud or authorizations for the purpose of
19 approving or processing negotiable instruments, electronic funds trans-
20 fers or similar methods of payments; or
- 21 (10) a deposit account information service company which issues to
22 inquiring banks or other financial institutions, for use only in reviewing a
23 consumer request for a deposit account at the inquiring bank or financial
24 institution, reports regarding account closures due to fraud, substantial
25 overdrafts, ATM abuse or similar negative information regarding a
26 consumer.
- 27 (k) A consumer reporting agency may impose a reasonable charge on
28 a consumer for initially placing a security freeze on a consumer file. The
29 amount of the charge may not exceed \$10. The charge to temporarily lift
30 the security freeze may not exceed \$8 per request. At no time shall the
31 consumer be charged for revoking the freeze. On January 1 of each year,
32 a consumer reporting agency may increase the charge for placing a se-
33 curity alert based proportionally on changes to the consumer price index
34 of all urban consumers as determined by the United States department
35 of labor, with fractional changes rounded to the nearest \$.25. An excep-
36 tion shall be allowed whereby the consumer will be charged zero dollars
37 by the consumer reporting agency placing the security freeze if:
- 38 (1) The consumer is a victim of identity theft and, upon the request
39 of the consumer reporting agency, provides the consumer reporting
40 agency with a police report; or
- 41 (2) the consumer is 62 or more years of age.
- 42 (l) 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 (m) Any consumer damaged by an intentional or negligent violation
10 of this section may bring an action for and shall be entitled to recovery
11 of actual damages, plus reasonable attorney fees, court costs and other
12 reasonable costs of prosecution of the action.

13 (n) This section shall be part of and supplemental to the fair credit
14 reporting act.

15 New Sec. 3. (a) Nothing in section 2, and amendments thereto, shall
16 be construed to require the following to place a security freeze on a
17 consumer report:

18 (1) A check services or fraud prevention services company, which
19 issues reports on incidents of fraud or authorizations for the purpose of
20 approving or processing negotiable instruments, electronic funds trans-
21 fers, or similar methods of payments;

22 (2) a deposit account information service company which issues to
23 inquiring banks or other financial institutions, for use only in reviewing a
24 consumer request for a deposit account at the inquiring bank or financial
25 institution, reports regarding account closures due to fraud, substantial
26 overdrafts, ATM abuse or similar negative information regarding a
27 consumer;

28 (3) a reseller of credit information that assembles or merges infor-
29 mation contained in the database of another consumer reporting agency
30 or multiple consumer reporting agencies and does not maintain a per-
31 manent database of credit information from which new consumer reports
32 are produced;

33 (4) any database or file which consists solely of any information ad-
34 verse to the interests of the consumer, including, but not limited to, crim-
35 inal record information, which is used for fraud prevention or detection,
36 tenant screening, employment screening or any purpose permitted by the
37 federal fair credit reporting act, 15 U.S.C. §1681b;

38 (5) a person to the extent such person offers fraud prevention services
39 that issues reports on incidents of fraud or reports used primarily in the
40 detection or prevention of fraud; or

41 (6) any bank, savings bank, trust company, savings and loan associa-
42 tion, credit union or any other financial institution regulated by the state
43 of Kansas or any agency of the United States.

- 1 (b) This section shall be part of and supplemental to the fair credit
- 2 reporting act.
- 3 Sec. 4. K.S.A. 50-702 is hereby repealed.
- 4 Sec. 5. This act shall take effect and be in force from and after its
- 5 publication in the statute book.