

HOUSE BILL No. 2852

By Committee on Veterans, Military and Homeland Security

2-13

9 AN ACT concerning veterans and active duty service personnel; relating
10 to placing a security freeze on consumer reports; amending K.S.A.
11 2007 Supp. 50-702 and 50-723 and repealing the existing sections.
12

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

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

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

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

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

41 (d) The term “investigative consumer report” means a consumer re-
42 port or portion thereof in which information on a consumer’s character,
43 general reputation, personal characteristics, or mode of living is obtained

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

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

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

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

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

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

30 (j) The term "security freeze" means a notice placed on a consumer
31 report, at the request of the consumer and subject to certain exceptions,
32 that prohibits a consumer reporting agency from releasing the consumer's
33 consumer report or credit score relating to the extension of credit, when
34 the consumer has been the victim of identity theft *or when the consumer*
35 *is a veteran or is in active duty service in the United States military and*
36 *has experienced a security breach as defined in K.S.A. 2007 Supp. 50-*
37 *7a01, and amendments thereto, and reasonably believes or suspects that*
38 *he or she may become a victim of identity theft.*

39 Sec. 2. K.S.A. 2007 Supp. 50-723 is hereby amended to read as fol-
40 lows: 50-723. (a) A consumer who is a victim of identity theft, *or a con-*
41 *sumer who is a veteran or in active duty service in the United States*
42 *military and has experienced a security breach as defined in K.S.A. 2007*
43 *Supp. 50-7a01, and amendments thereto, and reasonably believes or sus-*

1 *pects that he or she may become a victim of identity theft*, may elect to
2 place a security freeze on the consumer's consumer report by written
3 request, sent by certified mail, which includes, *if the consumer is a veteran*
4 *or in active duty service in the United States military and has experienced*
5 *a security breach, a copy of the notice required under K.S.A. 2007 Supp.*
6 *50-7a01, and amendments thereto, or if the consumer was a victim of*
7 *identity theft*, a valid copy of a police report, investigative report or com-
8 plaint the consumer has filed with a law enforcement agency about un-
9 lawful use of such consumer's personal information by another person
10 ~~and~~. All consumers electing to place a security freeze on the consumer's
11 consumer report shall provide clear and proper identification; to a con-
12 sumer reporting agency, at an address designated by the consumer re-
13 porting agency to receive such requests. A consumer reporting agency
14 shall place a security freeze on a consumer's consumer report no later
15 than five business days after receiving:

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

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

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

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

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

- 42 (1) Clear and proper identification;
- 43 (2) the unique personal identification number or password provided

1 by the consumer reporting agency in accordance with subsection (c); and
2 (3) the proper information regarding the time period for which the
3 report shall be available to users of the consumer report.

4 (f) A consumer reporting agency that receives a request from a con-
5 sumer to temporarily lift a freeze on a consumer report pursuant to sub-
6 section (e) shall comply with the request no later than three business days
7 after receiving the request. A consumer reporting agency may develop
8 procedures involving the use of telephone, fax, the internet or other elec-
9 tronic media to receive and process a request from a consumer to tem-
10 porarily lift a freeze on a consumer report pursuant to subsection (e) in
11 an expedited manner.

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

15 (1) Upon consumer request as provided in this section; or
16 (2) if the consumer's consumer report was frozen due to a material
17 misrepresentation of fact by the consumer, in which case, if a consumer
18 reporting agency intends to remove a freeze upon the consumer's con-
19 sumer report, the consumer reporting agency shall notify the consumer
20 in writing prior to removing the freeze on the consumer's consumer
21 report.

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

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

30 ~~(j)~~ (i) A security freeze does not apply to a consumer report provided
31 to:

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

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

37 (3) a person or entity, or a subsidiary, affiliate or agent of such person
38 or entity, or an assignee of a financial obligation owing by the consumer
39 to such person or entity, or a prospective assignee of a financial obligation
40 owing by the consumer to such person or entity in conjunction with the
41 proposed purchase of the financial obligation, with which the consumer
42 has or had prior to assignment of an account or contract, including a
43 demand deposit account, or to whom the consumer issued a negotiable

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

1 Name, date of birth, social security number and address. Written confir-
2 mation is not required for technical modifications of a consumer's official
3 information, including name and street abbreviations, complete spellings
4 or transposition of numbers or letters. In the case of an address change,
5 the written confirmation shall be sent to both the new address and to the
6 former address.

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

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

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

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

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

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

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

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

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

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

37 (q) This section shall take effect and be in force on and after January
38 1, 2007.

39 Sec. 3. K.S.A. 2007 Supp. 50-702 and 50-723 are hereby repealed.

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