

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

A Bill

HOUSE BILL 1037

5 By: Representatives D. Creekmore, Woods
6 By: Senator Broadway
7
8

For An Act To Be Entitled

10 AN ACT TO INCREASE THE IDENTITY THEFT PROTECTION
11 AVAILABLE UNDER THE ARKANSAS CONSUMER REPORT
12 SECURITY FREEZE ACT; TO PERMIT PLACEMENT OF A
13 SECURITY FREEZE PRIOR TO BECOMING A VICTIM OF
14 IDENTITY THEFT; TO REDUCE THE FEES CHARGED FOR
15 THE PLACEMENT, REMOVAL, OR TEMPORARY LIFTING OF A
16 SECURITY FREEZE; TO ELIMINATE THE SECURITY FREEZE
17 FEES CHARGED TO IDENTITY THEFT VICTIMS,
18 INDIVIDUALS ON ACTIVE MILITARY DUTY, AND
19 INDIVIDUALS OVER SIXTY-FIVE (65) YEARS OF AGE;
20 AND FOR OTHER PURPOSES.
21

Subtitle

22 TO INCREASE IDENTITY THEFT PROTECTION;
23 TO PERMIT PLACEMENT OF A SECURITY FREEZE
24 PRIOR TO BECOMING A VICTIM OF IDENTITY
25 THEFT; AND TO REDUCE THE FEES CHARGED
26 FOR THE PLACEMENT, REMOVAL, OR TEMPORARY
27 LIFTING OF A SECURITY FREEZE.
28
29
30

31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
32

33 SECTION 1. Arkansas Code Title 4, Chapter 112 is amended to read as
34 follows:

35 4-112-101. Title.

36 This chapter shall be known and may be cited as the "Arkansas Consumer



1 Report Security Freeze Act”.

2

3 4-112-102. Definitions.

4 As used in this chapter:

5 (1) “Consumer” means an individual ~~who is a resident of this~~
6 ~~state and who has been a victim of identity theft and who has submitted, at~~
7 ~~the time the security freeze is requested, a copy of a valid investigative~~
8 ~~report, an incident report, or a complaint with a law enforcement agency~~
9 ~~about the unlawful use of the victim’s identifying information by another~~
10 ~~person;~~

11 (2) “Consumer report” means the same as defined in 15 U.S.C. §
12 1681a(d) as it existed on January 1, 2007;

13 (3) “Consumer reporting agency” means the same as defined in 15
14 U.S.C. § 1681a(f) as it existed on January 1, 2007;

15 (4) “Proper identification” means the same as defined in 15
16 U.S.C. § 1681h(a)(1) as it existed on January 1, 2007; ~~and~~

17 (5) “Security freeze” means a notice placed in a consumer report
18 of a consumer at the request of the consumer that prohibits a consumer
19 reporting agency from releasing the consumer report or credit score of the
20 consumer in response to a request to open a new account or to extend credit;
21 and

22 (6)(A) "Victim of identity theft" means a consumer who supplies
23 to a consumer reporting agency, in conjunction with a request for a security
24 freeze, a copy of a valid investigative report, an incident report, or a
25 complaint with a law enforcement agency alleging the unlawful use of the
26 consumer’s identifying information by another person.

27 (B) The copy of the valid investigative report, the
28 incident report, or the complaint with a law enforcement agency may be
29 transmitted to the consumer reporting agency by mail, fax, or secure
30 electronic connection or secure electronic mail connection if the connection
31 is made available by the consumer reporting agency.

32

33 4-112-103. Placement of security freeze.

34 (a)~~(1)~~ A consumer may request that a security freeze be placed on his
35 or her consumer report by:

36 (1) ~~sending~~ Sending a his or her request in writing by ~~certified~~

1 mail or facsimile transmission to a consumer reporting agency ~~at an address~~
 2 ~~designated by the consumer reporting agency to receive such requests;~~

3 (2) Telephoning his or her request to a consumer reporting
 4 agency and providing over the telephone proper identification or certain
 5 personal identification information required by the consumer reporting
 6 agency; or

7 (3) Electronically forwarding his or her request to a consumer
 8 reporting agency through a secure electronic connection or a secure
 9 electronic mail connection if the connection is made available by the
 10 consumer reporting agency.

11 ~~(2) This subsection does not prevent a consumer reporting agency~~
 12 ~~from advising a third party that a security freeze is in effect with respect~~
 13 ~~to the consumer report of a consumer.~~

14 (b)(1) Except as provided in subdivision (b)(2) of this section, a
 15 consumer reporting agency shall place a security freeze on a consumer report
 16 of a consumer no later than ~~five (5)~~ three (3) business days after receiving
 17 from the consumer:

- 18 (A) A ~~written~~ request as provided in subsection (a) of
- 19 this section;
- 20 (B) Proper identification; and
- 21 (C) Payment of the required fee, if applicable.

22 (2) For any security freeze requested ~~before May 1, 2008~~ by a
 23 victim of identity theft, the deadline stated in this subsection shall be ~~ten~~
 24 ~~(10) business days if a consumer reporting agency in good faith is unable to~~
 25 ~~process during normal business hours the quantity of security freeze requests~~
 26 ~~received~~ twenty-four (24) hours.

27 (c)~~(1)~~ Within five (5) business days of the receipt of the information
 28 and any applicable fees under subsection (b) of this section, The the
 29 consumer reporting agency shall:

30 (1) send Send a written confirmation of the placement of the
 31 security freeze to the consumer ~~within ten (10) business days;~~ and

32 (2) Upon placing the security freeze on the consumer report of
 33 the consumer, the consumer reporting agency shall provide Provide the
 34 consumer with a unique personal identification number or password to be used
 35 by the consumer when providing authorization for the release of his or her
 36 consumer report for a specific period of time.

1 (d) ~~If~~ At the time a consumer requests a security freeze, the consumer
 2 reporting agency shall disclose the process:

3 (1) Of placing a security freeze and temporarily lifting a
 4 security freeze; and

5 (2) For allowing access to information from the consumer report
 6 of the consumer for a period of time while the security freeze is in place.

7
 8 4-112-104. Access to consumer report ~~-~~ Notification of unauthorized
 9 access.

10 (a) If the consumer wishes to allow his or her consumer report to be
 11 accessed for a specific period of time while a security freeze is in place,
 12 he or she shall contact the consumer reporting agency using a method of
 13 contact designated by the consumer reporting agency requesting that the
 14 security freeze be temporarily lifted and providing, to complete the request,
 15 all of the following:

16 (1) Proper identification;

17 (2) The unique personal identification number or password
 18 provided by the consumer reporting agency ~~pursuant to~~ under § 4-112-103(c);
 19 and

20 (3) The proper information regarding the time period for which
 21 the consumer report shall be available to users of the consumer report; ~~and~~

22 ~~(4) The required fee, if applicable.~~

23 (b) A consumer reporting agency that receives a request from a
 24 consumer to temporarily lift a security freeze on his or her consumer report
 25 accompanied by all of the items listed in subsection (a) of this section
 26 shall comply with the request ~~no later than three (3) business days~~ within
 27 fifteen (15) minutes after receiving the completed request.

28 (c) A consumer reporting agency may develop procedures involving the
 29 use of telephone, facsimile, the Internet, or other electronic media to
 30 receive and process a request from a consumer to temporarily lift a security
 31 freeze on a consumer report ~~pursuant to~~ under subsection (a) of this section
 32 in an expedited manner.

33 (d) If in connection with an application for credit or any other use a
 34 third party requests access to a consumer report on which a security freeze
 35 is in effect and the consumer does not allow his or her consumer report to be
 36 accessed for that period of time, the third party may treat the application

1 as incomplete.

2 (e)(1) If a consumer reporting agency grants unauthorized access to a
 3 consumer's consumer report, then within three (3) days of learning that
 4 unauthorized access to the consumer report has been granted, the consumer
 5 reporting agency shall send notice to the consumer that unauthorized access
 6 has been granted for each time unauthorized access was granted.

7 (2) The notice shall include:

8 (A) The name of each party that obtained access to the
 9 consumer report;

10 (B) The corresponding date that each party was given
 11 access to the consumer report; and

12 (C) A detailed description of the information released.

13
 14 4-112-105. Removal of security freeze.

15 ~~(a)(1)~~ A consumer reporting agency shall remove or temporarily lift a
 16 security freeze placed on the consumer report of a consumer in the following
 17 cases:

18 ~~(A)(1)~~ Upon the consumer's request ~~pursuant to~~ under § 4-112-104
 19 or § 4-112-106; or

20 ~~(B)(2)~~ If the consumer report of the consumer was frozen due to
 21 a material misrepresentation of fact by the consumer.

22 ~~(2)(b)~~ If a consumer reporting agency intends to remove a security
 23 freeze upon a consumer report of a consumer and is not doing so at the
 24 request of the consumer, the consumer reporting agency shall notify the
 25 consumer in writing ~~prior to~~ at least three (3) business days before removing
 26 the security freeze on the consumer report of the consumer.

27 ~~(b)~~ ~~If a third party requests access to a consumer report on which a~~
 28 ~~security freeze is in effect and the third party request is in connection~~
 29 ~~with an application for credit or any other use and the consumer does not~~
 30 ~~allow his or her consumer report to be accessed for that period of time, the~~
 31 ~~third party may treat the application as incomplete.~~

32
 33 4-112-106. Consumer request for removal of security freeze.

34 (a)(1) A security freeze shall remain in place until the consumer
 35 requests that the security freeze be removed using a method of contact
 36 designated by the consumer reporting agency.

1 (2) A consumer reporting agency shall remove a security freeze
 2 within three (3) business days of receiving a request for removal under
 3 subdivision (a)(1) of this section from a consumer who provides with the
 4 request:

5 (A) Proper identification; and

6 (B) The unique personal identification number or password
 7 provided by the consumer reporting agency under § 4-112-103(c)(2), ~~and~~

8 ~~(C) The required fee, if applicable.~~

9 (b) A consumer reporting agency shall require proper identification of
 10 the consumer making a request to place or remove a security freeze.

11
 12 4-112-107. Exceptions.

13 (a) This chapter does not apply to the use of a consumer credit report
 14 by any of the following:

15 (1)(A) A person or an entity, or a subsidiary, an affiliate, or
 16 an agent of that person or entity, or an assignee of a financial obligation
 17 owed by the consumer to that person or entity, or a prospective assignee of a
 18 financial obligation owed by the consumer to that person or entity in
 19 conjunction with the proposed purchase of the financial obligation, with
 20 which the consumer has or had prior to assignment an account or a contract
 21 including a demand deposit account, or to whom the consumer issued a
 22 negotiable instrument, for the purposes of reviewing the account or
 23 collecting the financial obligation owed for the account, contract, or
 24 negotiable instrument.

25 (B) As used in this subdivision (a)(1), “reviewing the
 26 account” includes activities related to account maintenance, monitoring,
 27 credit line increases, and account upgrades and enhancements;

28 (2) A subsidiary, an affiliate, an agent, an assignee, or a
 29 prospective assignee of a person or an entity to which access has been
 30 granted for purposes of facilitating the extension of credit or other
 31 permissible use;

32 (3) A state or local agency, law enforcement agency, trial
 33 court, or private collection agency acting ~~pursuant to~~ under a court order,
 34 warrant, or subpoena;

35 (4) A child support agency acting ~~pursuant to~~ under Title IV-D
 36 of the Social Security Act, 42 U.S.C. § 651 et seq., as it existed on January

1 1, 2007;

2 (5) The state or its agents or assigns acting to investigate
3 fraud or acting to investigate or collect delinquent taxes or unpaid court
4 orders or to fulfill any of its other constitutional or statutory
5 responsibilities if such responsibilities are consistent with a permissible
6 purpose under 15 U.S.C. § 1681b, as it existed on January 1, 2007;

7 (6) The use of credit information used for purposes permitted
8 under 15 U.S.C. § 1681b(c), as it existed on January 8, 2007;

9 (7) Any person or entity administering a credit file monitoring
10 subscription or similar service to which the consumer has subscribed;

11 (8) Any person or entity for the purpose of providing a consumer
12 with a copy of his or her consumer report or credit score upon the request of
13 the consumer;

14 (9) Any person using the information in connection with the
15 business of insurance; or

16 (10) A consumer reporting ~~agency's~~ agency for its database or
17 file that is used for one (1) or more of the following:

- 18 (A) Maintaining criminal records;
- 19 (B) Fraud prevention or detection;
- 20 (C) Maintaining personal loss history information; or
- 21 (D) Employment, tenant, or individual background

22 screening.

23
24 4-112-108. Permissible fees - Exception.

25 ~~(a)(A)~~ Except as provided in subsection (c) of this section, a
26 consumer reporting agency may charge a consumer a fee of no more than ~~ten~~
27 ~~dollars (\$10.00)~~ five dollars (\$5.00) for each the initial placement of a
28 security freeze.

29 (b) No fee shall be charged for the removal of a security freeze, or a
30 temporary lifting of a security freeze for a period of time.

31 (c) A consumer reporting agency shall not charge a fee for the initial
32 placement of a security freeze if requested by a consumer who is:

- 33 (1) On active military duty;
- 34 (2) At least sixty-five (65) years of age; or
- 35 (3) A victim of identity theft.

36

1 4-112-109. Written confirmation.

2 (a) If a security freeze is in place, a consumer reporting agency
3 shall not change any of the following official information in a consumer
4 report without sending a written confirmation of the change to the consumer
5 within thirty (30) days of posting the change to the file of the consumer:

- 6 (1) Name;
- 7 (2) Date of birth;
- 8 (3) Social security number; and
- 9 (4) Address.

10 (b)(1) Written confirmation is not required for technical
11 modifications of official information of a consumer, including name and
12 street abbreviations, complete spellings, or the transposition of numbers or
13 letters.

14 (2) In the case of an address change, the written confirmation
15 shall be sent to both the new address and to the former address.

16

17 4-112-110. Entities not required to place security freeze.

18 The following entities are not required to place a security freeze on a
19 consumer report:

20 (1)(A) A consumer reporting agency that acts only as a reseller
21 of credit information by assembling and merging information contained in the
22 database of another consumer reporting agency or multiple consumer reporting
23 agencies and does not maintain a permanent database of credit information
24 from which new consumer reports are produced.

25 (B) However, a consumer reporting agency acting as a
26 reseller shall honor any security freeze placed on a consumer report by
27 another consumer reporting agency;

28 (2) A check services or fraud prevention services company that
29 issues reports on incidents of fraud or authorizations for the purpose of
30 approving or processing negotiable instruments, electronic funds transfers,
31 or similar methods of payments; or

32 (3) A deposit account information service company that issues
33 reports regarding account closures due to fraud, substantial overdrafts,
34 automatic teller machine abuse, or similar negative information regarding a
35 consumer to inquiring banks or other financial institutions for use only in
36 reviewing a consumer request for a deposit account at the inquiring bank or

1 financial institution.

2

3 4-112-111. Notice.

4 At any time that a consumer is required to receive a summary of rights
 5 required under 15 U.S.C. § 1681g(c), as it existed on January 1, 2007, the
 6 following notice shall be included:

7

8 “Arkansas Consumers Have the Right to Obtain a Security Freeze.

9

10 You have the right to place a “security freeze” on your credit report, which
 11 will prohibit a consumer reporting agency from releasing information in your
 12 credit report without your express authorization. ~~A security freeze must be~~
 13 ~~requested in writing by certified mail.~~ The security freeze is designed to
 14 prevent credit, loans, and services from being approved in your name without
 15 your consent. However, you should be aware that using a security freeze to
 16 take control over who gets access to the personal and financial information
 17 in your credit report may delay, interfere with, or prohibit the timely
 18 approval of any subsequent request or application you make regarding a new
 19 loan, credit, mortgage, government services or payments, rental housing,
 20 employment, investment, license, cellular phone, utilities, digital
 21 signature, Internet credit card transaction, or other services, including an
 22 extension of credit at point of sale.

23

24 When you place a security freeze on your credit report, you will be provided
 25 a personal identification number or password to use if you choose to remove
 26 the security freeze on your credit report or authorize the release of your
 27 credit report for a period of time after the security freeze is in place. To
 28 provide that authorization you must contact the consumer reporting agency by
 29 one (1) of the methods that it requires and provide all of the following:

- 30 (1) Your personal identification number or password;
- 31 (2) Proper identification to verify your identity; and
- 32 (3) The proper information regarding the period of time for
 33 which the consumer report shall be available; ~~and~~
- 34 ~~(4) Payment of the appropriate fee, if any.~~

35

36 A consumer reporting agency must authorize the release of your credit report

1 for a period of time within fifteen (15) minutes and remove a security freeze
 2 no later than three (3) business days after receiving all of the above items
 3 by any method that the consumer reporting agency allows.

4
 5 A security freeze does not apply to a person or an entity, or its affiliates,
 6 or collection agencies acting on behalf of the person or entity with which
 7 you have an existing account that requests information in your credit report
 8 for the purposes of reviewing or collecting the account. Reviewing the
 9 account includes activities related to account maintenance, monitoring,
 10 credit line increases, and account upgrades and enhancements.

11
 12 You have a right to bring a civil action against anyone, including a consumer
 13 reporting agency, that willfully or negligently fails to comply with any
 14 requirement of the Arkansas Consumer Report Security Freeze Act.

15
 16 A consumer reporting agency has the right to charge you up to ~~ten dollars~~
 17 ~~(\$10.00)~~ five dollars (\$5.00) to place a security freeze on your credit
 18 report, ~~up to ten dollars (\$10.00)~~ but may not charge you to temporarily lift
 19 a security freeze on your credit report, ~~and up to ten dollars (\$10.00)~~ or to
 20 remove a security freeze from your credit report. However, you shall not be
 21 charged any fee if you are on active military duty, at least sixty-five (65)
 22 years of age, or if you are a victim of identity theft and have submitted, ~~at~~
 23 ~~the time the security freeze is requested~~ in conjunction with the security
 24 freeze request, a copy of a valid investigative report or incident report or
 25 complaint with a law enforcement agency ~~about~~ alleging the unlawful use of
 26 your identifying information by another person.”

27
 28 4-112-112. Civil action.

29 (a) Any person or entity that willfully fails to comply with any
 30 requirement imposed under this chapter with respect to any consumer is liable
 31 to that consumer in an amount equal to the sum of:

- 32 (1) Any actual damages sustained by the consumer; and
 33 (2) In the case of any successful action to enforce any
 34 liability under this chapter, the costs of the action together with
 35 reasonable attorney’s fees as determined by the court.

36 (b) Any person or entity that obtains a consumer report, requests a

1 security freeze, or requests the temporary lift of a security freeze or the
 2 removal of a security freeze from a consumer reporting agency under false
 3 pretenses or in an attempt to violate federal or state law is liable to the
 4 consumer reporting agency for actual damages sustained by the consumer
 5 reporting agency or one thousand dollars (\$1,000), whichever is greater.

6 (c) Any person or entity that is negligent in failing to comply with
 7 any requirement imposed under this chapter with respect to any consumer is
 8 liable to that consumer in an amount equal to the sum of:

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

11 (2) In the case of any successful action to enforce any
 12 liability under this chapter, the costs of the action together with
 13 reasonable attorney's fees as determined by the court.

14 (d) Upon a finding by the court that an unsuccessful pleading, motion,
 15 or other paper filed in connection with an action under this chapter was
 16 filed in bad faith or for purposes of harassment, the court shall award to
 17 the prevailing party reasonable attorney's fees in relation to the work
 18 expended in responding to the pleading, motion, or other paper.

19
 20 4-112-113. Enforcement – Penalties – Remedies.

21 (a) A violation of this chapter constitutes an unfair act or practice
 22 or a deceptive act or practice under § 4-88-101 et seq. pertaining to
 23 deceptive trade practices.

24 (b)(1) All remedies, penalties, and authority granted to the Attorney
 25 General under § 4-88-101 et seq. shall be available to the Attorney General
 26 for enforcement of this chapter.

27 (2) The remedies and penalties provided by this section are
 28 cumulative to each other and the remedies or penalties available under all
 29 other laws of this state.

30
 31 4-112-114. No prohibition on advising third party that security freeze
 32 is in effect.

33 This chapter does not prohibit a consumer reporting agency from
 34 advising a third party that a security freeze is in effect with respect to
 35 the consumer report of a consumer.