

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.

Act 223 of the Regular Session

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

As Engrossed: H2/6/09

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



1 This chapter shall be known and may be cited as the "Arkansas Consumer
2 Report Security Freeze Act".

3
4 4-112-102. Definitions.

5 As used in this chapter:

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

12 (2) "Consumer report" means the same as defined in 15 U.S.C. §
13 1681a(d) as it existed on January 1, ~~2007~~ 2009;

14 (3) "Consumer reporting agency" means the same as defined in 15
15 *U.S.C. § 1681a(f) as it existed on January 1, ~~2007~~ 2009*;

16 (4) "Credit report" means a consumer report that a consumer
17 reporting agency furnishes to a person that it has reason to believe intends
18 to use the consumer report as a factor in establishing the consumer's
19 eligibility for credit to be used primarily for personal, family, or
20 household purposes;

21 ~~(4)(5)~~ "Proper identification" means the same as defined in 15
22 U.S.C. § 1681h(a)(1) as it existed on January 1, ~~2007~~ 2009; ~~and~~

23 ~~(5)(6)~~ "Security freeze" means a notice placed in a ~~consumer~~
24 credit report of a consumer at the request of the consumer that prohibits a
25 consumer reporting agency from releasing the ~~consumer credit~~ report or credit
26 score of the consumer in response to a request to open a new account or to
27 extend credit; and

28 (7)(A) "Victim of identity theft" means a consumer who supplies
29 to a consumer reporting agency, in conjunction with a request for a security
30 freeze, a copy of a valid investigative report, an incident report, or a
31 complaint with a law enforcement agency alleging the unlawful use of the
32 consumer's identifying information by another person.

33 (B) The copy of the valid investigative report, the
34 incident report, or the complaint with a law enforcement agency may be
35 transmitted to the consumer reporting agency by mail or secure electronic
36 connection or secure electronic mail connection if the connection is made

1 available by the consumer reporting agency.

2
3 4-112-103. Placement of security freeze.

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

6 (1) sending ~~Sending~~ a his or her request in writing by ~~certified~~
7 ~~mail~~ to a consumer reporting agency ~~at an address designated by the consumer~~
8 ~~reporting agency to receive such requests;~~

9 (2) Telephoning his or her request to a consumer reporting
10 agency and providing over the telephone proper identification or certain
11 personal identification information required by the consumer reporting
12 agency; or

13 (3) Electronically forwarding his or her request to a consumer
14 reporting agency through a secure electronic connection or a secure
15 electronic mail connection if the connection is made available by the
16 consumer reporting agency.

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

20 ~~(b)(1) Except as provided in subdivision (b)(2) of this section, a A~~
21 ~~consumer reporting agency shall place a security freeze on a consumer credit~~
22 ~~report of a consumer no later than ~~five (5)~~ three (3) business days after~~
23 ~~receiving from the consumer:~~

24 ~~(A)(1) A written request as provided in subsection (a) of this~~
25 ~~section;~~

26 ~~(B)(2) Proper identification; and~~

27 ~~(C)(3) Payment of the required fee, if applicable.~~

28 ~~(2) For any security freeze requested before May 1, 2008, the~~
29 ~~deadline stated in this subsection shall be ten (10) business days if a~~
30 ~~consumer reporting agency in good faith is unable to process during normal~~
31 ~~business hours the quantity of security freeze requests received.~~

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

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

1 (2) ~~Upon placing the security freeze on the consumer report of~~
 2 ~~the consumer, the consumer reporting agency shall provide~~ Provide the
 3 consumer with a unique personal identification number or password to be used
 4 by the consumer when providing authorization for the release of his or her
 5 ~~consumer~~ credit report for a specific period of time.

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

8 (1) Of placing a security freeze and temporarily lifting a
 9 security freeze; and

10 (2) For allowing access to information from the ~~consumer~~ credit
 11 report of the consumer for a period of time while the security freeze is in
 12 place.

13
 14 4-112-104. Access to ~~consumer~~ credit report - Notification of
 15 unauthorized access.

16 (a) If the consumer wishes to allow his or her ~~consumer~~ credit report
 17 to be accessed for a specific period of time while a security freeze is in
 18 place, he or she shall contact the consumer reporting agency using a method
 19 of contact designated by the consumer reporting agency requesting that the
 20 security freeze be temporarily lifted and providing, to complete the request,
 21 all of the following:

22 (1) Proper identification;

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

26 (3) The proper information regarding the time period for which
 27 ~~the consumer~~ credit report shall be available to users of the ~~consumer~~ credit
 28 ~~report; and~~

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

30 **(b)(1)** *A Except as provided in subdivision (b)(2) of this section, a*
 31 *consumer reporting agency that receives a request in compliance with*
 32 *subsection (a) of this section from a consumer to temporarily lift a security*
 33 *freeze on his or her ~~consumer~~ credit report accompanied by all of the items*
 34 *listed in subsection (a) of this section shall comply with the request no*
 35 *later than:*

36 **(A)** *~~three~~ Three (3) business days after receiving the*

1 completed request by mail; or

2 (B) Fifteen (15) minutes after receiving the completed
3 request by:

4 (i) Telephone;

5 (ii) Secure electronic connection; or

6 (iii) Secure electronic mail connection.

7 (2) A consumer reporting agency may temporarily lift a security
8 freeze as soon as the circumstances reasonably permit during normal business
9 hours if the consumer reporting agency's ability to temporarily lift the
10 security freeze within fifteen (15) minutes is prevented by:

11 (A) An act of God, including without limitation a fire, an
12 earthquake, a hurricane, a storm, or a similar natural disaster or phenomena;

13 (B) An unauthorized or illegal act by a third party,
14 including without limitation terrorism, sabotage, riot, vandalism, a labor
15 strike or dispute disrupting operations, or a similar occurrence;

16 (C) An operational interruption, including without
17 limitation electrical failure, an unanticipated delay in the delivery of
18 equipment or a replacement part, a computer hardware or software failure
19 inhibiting response time, or a similar disruption;

20 (D) Governmental action, including without limitation an
21 emergency order or regulation, a judicial or law enforcement action, or a
22 similar directive;

23 (E) Regularly scheduled maintenance or updates during
24 other than normal business hours to the consumer reporting agency's computer
25 systems;

26 (F) Commercially reasonable maintenance or repair to the
27 consumer reporting agency's systems if the maintenance or repair is
28 unexpected or unscheduled; or

29 (G) The receipt of a removal request outside of normal
30 business hours.

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

36 (d) If in connection with an application for credit or any other use a

1 third party requests access to a *credit* report on which a security freeze is
2 in effect and the consumer does not allow his or her *credit report* to be
3 accessed for that period of time, the third party may treat the application
4 as incomplete.

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

10
11 4-112-105. Removal of security freeze.

12 (a)~~(1)~~ A consumer reporting agency shall remove or temporarily lift a
13 security freeze placed on the ~~consumer~~ *credit report* of a consumer in the
14 following cases:

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

17 ~~(B)(2)~~ If the ~~consumer~~ *credit report* of the consumer was frozen
18 due to a material misrepresentation of fact by the consumer.

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

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

29
30 4-112-106. Consumer request for removal of security freeze.

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

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

1 request:

2 (A) Proper identification; and

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

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

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

8

9 4-112-107. Exceptions.

10 (a) This chapter does not apply to the use of a ~~consumer~~ credit report
11 by any of the following:

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

22 (B) As used in this subdivision (a)(1), "reviewing the
23 account" includes activities related to account maintenance, monitoring,
24 credit line increases, and account upgrades and enhancements;

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

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

32 (4) A child support agency acting ~~pursuant to~~ under Title IV-D
33 of the Social Security Act, 42 U.S.C. § 651 et seq., as it existed on January
34 1, ~~2007~~ 2009;

35 (5) The state or its agents or assigns acting to investigate
36 fraud or acting to investigate or collect delinquent taxes or unpaid court

1 orders or to fulfill any of its other constitutional or statutory
 2 responsibilities if such responsibilities are consistent with a permissible
 3 purpose under 15 U.S.C. § 1681b, as it existed on January 1, ~~2007~~ 2009;

4 (6) The use of credit information used for purposes permitted
 5 under 15 U.S.C. § 1681b(c), as it existed on ~~January 8, 2007~~ January 1, 2009;

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

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

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

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

15 (A) Maintaining criminal records;

16 (B) Fraud prevention or detection;

17 (C) Maintaining personal loss history information; or

18 (D) Employment, tenant, or individual background

19 screening.

20
 21 4-112-108. Permissible fees - Exception.

22 ~~(a)(A)~~ Except as provided in subsection (b) of this section, a
 23 consumer reporting agency may charge a consumer a fee of no more than ~~ten~~
 24 ~~dollars (\$10.00)~~ five dollars (\$5.00) for each the:

25 (1) Initial placement of a security freeze;

26 (2) ~~removal~~ Removal of a security freeze; or a

27 (3) ~~temporary~~ Temporary lifting of a security freeze for a
 28 period of time.

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

31 (1) At least sixty-five (65) years of age; or

32 (2) A victim of identity theft.

33
 34 4-112-109. Written confirmation.

35 (a) If a security freeze is in place, a consumer reporting agency
 36 shall not change any of the following official information in a ~~consumer~~

1 credit report without sending a written confirmation of the change to the
2 consumer within thirty (30) days of posting the change to the file of the
3 consumer:

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

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

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

14
15 4-112-110. Entities not required to place security freeze.

16 The following entities are not required to place a security freeze on a
17 ~~consumer~~ credit report:

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

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

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

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

36

1 4-112-111. Notice.

2 At any time that a consumer is required to receive a summary of rights
3 required under 15 U.S.C. § 1681g(c), as it existed on January 1, ~~2007~~ 2009,
4 the following notice shall be included:

5

6 "Arkansas Consumers Have the Right to Obtain a Security Freeze.

7

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

21

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

- 28 (1) Your personal identification number or password;
29 (2) Proper identification to verify your identity; and
30 (3) The proper information regarding the period of time for

31 which the ~~consumer~~ credit report shall be available; ~~and~~

32 ~~(4) Payment of the appropriate fee, if any.~~

33

34 A consumer reporting agency must authorize the release of your credit report
35 for a period of time within fifteen (15) minutes or as soon as practical if
36 good cause exists for the delay, and must remove a security freeze no later

1 than three (3) business days after receiving all of the above items by any
2 method that the consumer reporting agency allows.

3
4 A security freeze does not apply to a person or an entity, or its affiliates,
5 or collection agencies acting on behalf of the person or entity with which
6 you have an existing account that requests information in your credit report
7 for the purposes of reviewing or collecting the account. Reviewing the
8 account includes activities related to account maintenance, monitoring,
9 credit line increases, and account upgrades and enhancements.

10
11 You have a right to bring a civil action against anyone, including a consumer
12 reporting agency, that willfully or negligently fails to comply with any
13 requirement of the Arkansas Consumer Report Security Freeze Act.

14
15 A consumer reporting agency has the right to charge you up to ~~ten dollars~~
16 ~~(\$10.00)~~ five dollars (\$5.00) to place a security freeze on your credit
17 report, ~~up to ten dollars (\$10.00)~~ to temporarily lift a security freeze on
18 your credit report, ~~and up to ten dollars (\$10.00)~~ or to remove a security
19 freeze from your credit report. However, you shall not be *charged any fee if*
20 *you are at least sixty-five (65) years of age or if you are a victim of*
21 *identity theft and have submitted, ~~at the time the security freeze is~~*
22 *~~requested~~ in conjunction with the security freeze request, a copy of a valid*
23 *investigative report or incident report or complaint with a law enforcement*
24 *agency ~~about~~ alleging the unlawful use of your identifying information by*
25 *another person.”*

26
27 4-112-112. Civil action.

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

31 (1) Any actual damages sustained by the consumer; and

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

35 (b) Any person or entity that obtains a ~~consumer~~ credit report,
36 requests a security freeze, or requests the temporary lift of a security

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

36 /s/ D. Creekmore

APPROVED: 2/25/2009